SEVENTY-SIXTH DAY (Saturday, May 25, 1991)

The Senate met at 10:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Albert Elam, First Baptist Church, Dale, offered the invocation as follows:

Our Father, we ask for Your blessing on these our leaders, that Your gift of wisdom and knowledge be granted and that Your sweet spirit fill each heart with joy and peace. In the name of Jesus Christ our Lord, we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

PERMISSION TO MEET GRANTED

On motion of Senator Moncrief and by unanimous consent, the Conference Committee on S.B. 1 was granted permission to meet while the Senate was in session.

MESSAGE FROM THE HOUSE

House Chamber May 25, 1991

HONORABLE BOB BULLOCK PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

- S.B. 44, Relating to the removal of certain territory from an emergency services district by the governing body of a municipality.
- S.B. 140, Relating to an exemption from regulation of certain driver-training courses and driver-training instructors. (As substituted)
- S.B. 151, Relating to eligibility for participation of graduate students in the Texas State College and University Employees Uniform Insurance Benefits Program.
- S.B. 180, Relating to peace officer memorial ceremonies within the Capitol Complex.
- S.B. 183, Relating to the licensing of certain persons by the State Board of Dental Examiners.
- S.B. 201, Relating to the violation by a county clerk or the clerk's deputy of certain requirements relating to the filing of a subdivision plat or replat.

- S.B. 219, Relating to the conveyance of certain state-owned real property by the Texas Employment Commission. (As amended)
 - S.B. 240, Relating to state employee training.
 - S.B. 249, Relating to the composition of the Brazos County Juvenile Board.
- **S.B. 422**, Relating to the disposition of abandoned or unclaimed property in the possession of a municipal or county law enforcement agency.
- S.B. 445, Relating to the transfer of the Outstanding Rural Scholar Recognition Program to the Center for Rural Health Initiatives.
- **S.B.** 483, Relating to a temporary absence in the office of county judge or county commissioner; validation of certain temporary county appointments.
 - S.B. 750, Relating to notice of a lien on aircraft for repairs and maintenance.
- S.B. 834, Relating to the authority of a county government to improve certain roads in the county.
- S.B. 876, Relating to the eligibility of certain municipalities to adopt an additional sales and use tax to reduce property taxes.
- S.B. 885, Relating to the admissibility of the statement of a child signed in the presence of a magistrate and a bailiff or law enforcement officer. (As amended)
 - S.B. 912, Relating to the composition of community justice task forces.
- S.B. 980, Relating to estimated reclamation bond amounts for uranium surface mining permits.
- S.B. 1033, Relating to the investment of certain state funds in crude oil futures contracts. (As amended)
- S.B. 1035, Relating to the budgets of certain specialized local entities. (As amended)
- S.B. 1046, Relating to the length of leases entered into by the Board for Lease of University Lands.
- S.B. 1092, Relating to procedures governing the filing of certain utility proceedings. (As amended)
- S.B. 1097, Relating to procedures governing the determination of certain utility proceedings. (As amended)
- S.B. 1119, Relating to the open meetings requirements applicable to school board deliberations on certain matters.
- S.B. 1200, Relating to agreements or decisions and actions concerning a planned unit development district in a municipality's extraterritorial jurisdiction.
- S.B. 1282, Relating to the administrative adjudication of violations of city ordinances dealing with the parking and stopping of vehicles.
 - S.B. 1287, Relating to the health professions resource center.
- S.B. 1306, Relating to responsibility for the preparation of a regional solid waste management plan in certain regions.
 - S.B. 1359, Relating to the creation of the Tri-State Corridor Commission.
- S.B. 1375, Relating to the terms of office of a member of a hospital district's governing board. (As amended)

- S.B. 1409, Relating to Municipal Drainage Utility systems, providing for expansion of service areas, adding users of property to the customer base, adopting ordinances and fee schedules, allowing liens for delinquent bills, and eliminating exemptions, and validating the operation of municipal billing systems in effect prior to effective date of this Act. (As substituted)
- S.B. 1418, Relating to the state military forces, including its membership, finances, and training.
- S.B. 1514. Relating to authorizing certain counties to spend general revenue funds or issue bonds for the financing of wastewater treatment and water distribution systems within the county. (As amended)
- S.B. 1554, Relating to establishing the Texas Academy of Leadership in the Humanities at Lamar University.
- S.B. 1612, Relating to appointment, service, and duties of masters in proceedings for court-ordered mental health services.

The House has concurred in Senate amendments to H.B. 191 by a record vote of 147 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to H.B. 779 by a record vote of 141 Ayes, 1 Noes, 2 Present-not voting.

Respectfully submitted,

BETTY MURRAY, Chief Clerk House of Representatives

SENATE BILL 181 WITH HOUSE AMENDMENT

Senator Brooks called S.B. 181 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Schoolcraft

Amend S.B. 181 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the licensing of marriage and family therapists and the regulation of the practice of marriage and family therapy and the selection of practitioners under certain insurance policies; providing a criminal penalty; providing an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. SHORT TITLE. This Act may be cited as the Licensed Marriage and Family Therapist Act.

SECTION 2. DEFINITIONS. In this Act:

- (1) "Board" means the Texas State Board of Examiners of Marriage and Family Therapists.

 - (2) "Board of health" means the Texas Board of Health.(3) "Department" means the Texas Department of Health.
- (4) "Licensed marriage and family therapist" means an individual who offers to provide marriage and family therapy for compensation.
- (5) "Marriage and family therapy" means the rendering of professional therapy services to individuals, families, or married couples, singly or in groups, and involves the professional application of family systems theories and

techniques in the delivery of therapy services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction within the context of marriage or family systems.

SECTION 3. BOARD. (a) The Texas State Board of Examiners of Marriage and Family Therapists is an advisory body to the Texas Board of Health. The board is composed of nine members appointed by the governor with the advice and consent of the senate. Four members must be members of the public. Five members must be persons eligible for a license under this Act, one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years or have 5,000 hours of clinical experience in the practice of marriage and family therapy. In making the appointments of the five members eligible for a license under this Act, the governor shall consider recommendations made by recognized professional associations of marriage and family therapists in this state.

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(c) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4. APPLICATION OF SUNSET ACT. (a) The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires effective September 1, 1993.

(b) The board shall cooperate with the Sunset Advisory Commission in the commission's review of those agencies that license or regulate mental health professionals and will be reviewed for the Regular Session of the 73rd Legislature in 1993. The board shall assist the Sunset Advisory Commission in determining the extent to which the agencies that license or regulate mental health professionals should be combined into a single agency.

SECTION 5. TERMS; VACANCY. (a) Members of the board hold office for staggered terms of six years. Three members' terms expire February 1 of each odd-numbered year.

(b) In the event of a vacancy during a term, the governor shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

SECTION 6. OFFICERS. The board shall elect a chair and vice-chair from its members. The chair and vice-chair shall serve as provided by board rules.

SECTION 7. COMPENSATION. A member of the board may not receive compensation for serving on the board. A member is entitled to the per diem set by the legislature for each day that the member performs functions as a member of the board. A member is not entitled to reimbursement for travel expenses other than transportation expenses. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

SECTION 8. MÉETINGS. (a) The board shall meet at least semiannually. (b) The board may meet at other times at the call of the chair or as provided by the rules of the board.

SECTION 9. RESTRICTIONS ON APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A member of the board or an employee of the department who performs functions for the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the field of marriage and family therapy or a related mental health field;

(2) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant

of a trade association in the field of marriage and family therapy or a related mental health field; or

(3) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board if the member or employee is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding, unless notice and an opportunity to participate are given to each party to the proceeding.

(b) A public member of the board or the spouse of a public member may not have been or be related to a person within the second degree by affinity or the third degree by consanguinity who has, except as a consumer, a financial interest in the

field of marriage and family therapy or a related mental health field.

(c) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 10. REMOVAL OF BOARD MEMBER. (a) It is a ground for

removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain, during service on the board, the qualifications

required for appointment to the board;

(3) violates a prohibition established by Section 9 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is

taken when a ground for removal of a board member exists.

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the board of the ground. The chair shall then notify the governor that a potential ground for removal exists.

SECTION 11. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board shall keep an information file about each complaint filed with the board that the board has authority to resolve. If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of

the status of the complaint.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

SECTION 12. FEES; FUND. (a) The board of health shall by rule set fees for licenses, license renewals, examinations, and all other administrative expenses under this Act.

(b) The board of health shall set the fees in amounts that are reasonable and

necessary to cover administrative costs.

(c) The marriage and family therapists licensing account is created in the general revenue fund and may be used only by the board of health and the department in the administration of this Act. Fees received by the board of health under this Act shall be deposited in the general revenue fund to the credit of the account.

(d) The salaries and reimbursements paid by the department shall be comparable to those prescribed in the General Appropriations Act for persons holding comparable positions. The general rules of the General Appropriations Act apply to the expenditure of funds under this section. The board of health and department may apply the funds covered by this section to replenish other budget items to the extent that funds were directed from those items to facilitate licensing marriage and family therapists before fees were available to do so.

SECTION 13. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules for its own procedures.

- (b) The board shall propose rules relating to licensing requirements for marriage and family therapists for consideration by the board of health.
- (c) Based on rules adopted by the board of health, the board shall determine the qualifications and fitness of applicants for licenses under this Act.
- (d) The board shall adopt a code of professional ethics for persons licensed under this Act.
- (e) On or before February 1 of each year, the board shall present a written report to the governor and the presiding officer of each house of the legislature that describes the activities of the board and details the disposition of all funds received and disbursed by the board during the preceding year.

SECTION 14. EXECUTIVE DIRECTOR; PERSONNEL. (a) The commissioner of health shall appoint an executive director for the board after consultation with the board members. The executive director must be an employee of the department.

- (b) The executive director shall administer the licensing activities conducted under this Act as directed by the board or the commissioner of health.
- (c) The basic personnel and necessary facilities that are required to administer this Act shall be designated by the commissioner of health and made available to the board for the efficient administration of its duties. The department shall secure by agreement services that are necessary and provide for compensation for those services and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full-time or part-time basis necessary to administer this Act.

SECTION 15. LICENSE REQUIRED. (a) Unless a person is licensed under this Act or exempted under Section 16 of this Act, the person may not practice as a marriage and family therapist.

- (b) A person who is not licensed under this Act may not:
 - (1) use the title "Licensed Marriage and Family Therapist"; or
- (2) use any title that would imply licensure or certification in marriage and family therapy except to the extent that the person is authorized by law to perform marriage and family therapy within the course and scope of another license issued under the laws of this state.

SECTION 16. EXEMPTIONS. This Act does not apply to:

- (1) the activities of a person employed to perform marriage and family therapy by a federal, state, county, or municipal agency or a public or private educational institution, if the activities are within the scope of the person's employment;
- (2) the activities of a student, intern, or trainee in marriage and family therapy in connection with a recognized course of study in marriage and family therapy at an accredited institution of higher education or other training institution, if the activities constitute a part of the course of study and the person is designated by a title such as "marriage and family therapist intern";

- (3) services rendered by a nonresident of this state for not more than 30 days during the calendar year, if the person is authorized to provide the services under the law of the state or country of the person's residence;
- (4) the activities and services of members of other licensed professions, including physicians, attorneys, registered nurses, occupational therapists, psychologists, certified social workers, and licensed professional counselors; or
- (5) the activities and services of Christian Science practitioners recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal or other recognized religious practitioners, including pastoral counselors, if those practitioners practice marriage and family therapy in a manner consistent with the laws of this state.

SECTION 17. LICENSE APPLICATION. (a) An applicant for a license under this Act must file a written application with the board on a form prescribed by the board, accompanied by the application fee.

(b) A person is eligible to apply for a license if the person:

(1) is at least 18 years of age;

- (2) holds a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with coursework and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board;
- (3) after receipt of a degree meeting the requirements of Subdivision (2) of this subsection, has completed two years of work experience in marriage and family therapist services that must:
- (A) include at least 1,000 hours of direct clinical services to individuals, couples, or families, of which at least 500 hours must be direct clinical services to couples or families; and
- (B) be supervised in a manner acceptable to the board, including at least 200 hours of supervision of the provision of direct clinical services by the applicant of which at least 100 hours must be supervised on an individual basis:

(4) is of good moral character;

- (5) has not been convicted of a felony or a crime involving moral turpitude:
- (6) does not use drugs or alcohol to an extent that affects the applicant's professional competency;

(7) has not had a license or certification revoked by a licensing agency

or by a certifying professional organization; and

- (8) has not been guilty of fraud or deceit in making the application.
- (c) An applicant who is not asking the board to waive the examination requirement shall file an application not later than the 90th day before the date of the examination that the applicant intends to take.

SECTION 18. APPLICATION REVIEW. (a) The board shall investigate

each application and other evidence submitted.

- (b) Except as provided by Subsection (c) of this section, not later than the 30th day before the date of the examination, the board shall notify each applicant whether the application has been accepted or rejected.
- (c) Not later than the 90th day after the date of receipt of a completed application from a person seeking licensure without examination or under Section 30 of this Act, the board shall notify the applicant that:
 - (1) the applicant may be licensed without examination;

- (2) an examination is required; or
- (3) the application is rejected.
- (d) A notice under Subsection (c) of this section to an applicant who is required to take an examination must state the reason for requiring the examination, the time and manner of conducting the examination, and the acts required of the applicant in connection with the examination.
- (e) A notice that an application is rejected must state the reason for the rejection.
- SECTION 19. EXAMINATION REQUIREMENTS. (a) Unless exempted from the examination requirement under Section 30 of this Act or by a determination of the board based on the applicant's education and professional experience, each applicant for a license under this Act must pass an examination prescribed by the board and approved by the commissioner of health. The examination may be composed of:
 - (1) a written examination;
- (2) a field examination, through questionnaires answered by the applicant's instructors, employers, supervisors, or other persons who are competent in the judgment of the board to assess the applicant's professional ability, and that may include written case studies and taped interviews;
 - (3) an oral examination; or
 - (4) any combination of those examinations.
- (b) An applicant shall apply to take the examination on a form prescribed by the board. The examination application must be accompanied by the examination fee set by the board of health.
- (c) The board shall determine the times and places for licensing examinations and shall offer the examinations at least semiannually. The board shall give reasonable public notice of the examinations in the manner provided by its rules.
- (d) Unless the examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than 30 days after the examination date. If the examination is so graded or reviewed, the board shall notify each examinee of the results not later than 15 days after the date on which the board receives the results from the national testing service. If the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day after the examination date.
- (e) An applicant who fails an examination may retake the examination on payment of an additional examination fee. The applicant must be reexamined not later than 12 months after the unsuccessful examination. On the failure of the applicant to pass a second or subsequent examination, the board may require the applicant to complete additional courses of study designated by the board. The board may require the applicant to present satisfactory evidence of completion of the required courses.
- (f) If requested in writing by a person who fails an examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.
- SECTION 20. LICENSE ISSUANCE. (a) The board shall issue an appropriate license to an individual who possesses the necessary requirements, passes the licensing examination, unless exempted from the examination requirement by the board, and pays the required fees.
- (b) Each license holder shall keep the board informed of the license holder's current address.
- SECTION 21. LICENSE RENEWAL. (a) A license issued under this Act is subject to annual renewal. The board shall adopt a system under which licenses expire on various dates during the year.

(b) A license holder may renew an unexpired license by paying the renewal fee before the expiration date of the license.

(c) If a person's license has been expired for less than 90 days, the person may renew the license by paying the unpaid renewal fees plus a late renewal fee in an

amount determined by the board.

(d) If the person's license has been expired for 90 days or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(e) The board shall notify each license holder in writing of the pending license expiration not later than the 30th day before the date on which the license expires.

(f) The board may prepare or approve continuing education programs for license holders and may require each license holder to participate in an approved continuing education program in order to renew a license issued under this Act.

SECTION 22. LICENSE BY RECIPROCITY. A person who is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensing or registration were, on the date of the licensing or registration, substantially equal to those prescribed by this Act, is entitled to a license without examination on submission of an application form and payment of an administrative fee.

SECTION 23. DISPLAY OF LICENSE; REGISTER. (a) Each person licensed under this Act shall display the license in a conspicuous manner in the

principal office or location in which the person practices.

(b) The board shall prepare a register of all persons licensed under this Act on an annual basis. The board shall make the register available to the public, license

holders, and other state agencies.

SECTION 24. INACTIVE STATUS. (a) A person who holds a license issued under this Act and who is not actively engaged in the practice of marriage and family therapy may apply to the board in writing to be placed on the inactive status list maintained by the board. The person must apply for inactive status before the expiration of the person's license. A person on inactive status is not required to pay the annual renewal fees.

- (b) A person on inactive status may not perform any activities regulated under this Act.
- (c) If a person on inactive status desires to reenter active practice, the person shall notify the board in writing. The board shall remove the person from the inactive status list on payment of an administrative fee and on compliance with educational or other requirements set by the board by rule.

SECTION 25. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. After a hearing, the board may deny, suspend, or revoke a license or otherwise discipline a license holder if the applicant for license or the license holder has:

- (1) been convicted of a felony or a misdemeanor involving moral turpitude;
 - (2) obtained or attempted to obtain registration by fraud or deception;
- (3) used drugs or alcohol to an extent that affects professional competence;

(4) been grossly negligent in performing professional duties;

- (5) been adjudicated mentally incompetent by a court of competent jurisdiction;
 - (6) practiced in a manner detrimental to the public health or welfare;
 - (7) advertised in a manner that tends to deceive or defraud the public;
- (8) had a license or certification revoked by a licensing agency or by a certifying professional organization; or

(9) otherwise violated this Act or a rule or code of ethics adopted under this Act.

SECTION 26. INJUNCTION. The board or department may institute a suit to enjoin the violation of this Act. The suit may be brought in Travis County, in the county of the defendant's residence, or in the county where any part of the violation occurred. A suit brought under this section is in addition to any other action, proceeding, or remedy authorized by law. The board or department shall be represented by the attorney general or the appropriate county or district attorney.

SECTION 27. CRIMINAL PENALTY. (a) A person, other than a person who is exempt under Section 16 of this Act, commits an offense if the person intentionally or knowingly acts as a marriage and family therapist without a license issued under this Act.

(b) An offense under this section is a Class B misdemeanor.

SECTION 28. CONFORMING AMENDMENTS. (a) Section 2(B), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas Insurance Code), is amended to read as follows:

(B) No policy of accident and sickness insurance shall make benefits contingent upon treatment or examination by a particular practitioner or by particular practitioners of the healing arts hereinafter designated unless such policy contains a provision designating the practitioner or practitioners who will be recognized by the insurer and those who will not be recognized by the insurer. Such provision may be located in the "Exceptions" or "Exceptions and Reductions" provisions, or elsewhere in the policy, or by endorsement attached to the policy, at the insurer's option. In designating the practitioners who will and will not be recognized, such provision shall use the following terms: Doctor of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of Chiropractic, Doctor of Optometry, Doctor of Podiatry, Audiologist, Speech-language Pathologist, Doctor in Psychology, Certified Social Worker—Advanced Clinical Practitioner, Licensed Dietitian, [and] Licensed Professional Counselor, and Licensed Marriage and Family Therapist.

For purposes of this Act, such designations shall have the following meanings: Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";

Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";

Doctor of Dentistry: One licensed by the State Board of Dental Examiners; Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;

Doctor of Optometry: One licensed by the Texas Optometry Board;

Doctor of Podiatry: One licensed by the State Board of Podiatry Examiners; Audiologist: One with a master's or doctorate degree in audiology from an accredited college or university and who is certified by the American Speech-language and Hearing Association;

Speech-language Pathologist: One with a master's or doctorate degree in speech pathology or speech-language pathology from an accredited college or university and who is certified by the American Speech-language and Hearing Association;

Doctor in Psychology: One licensed by the Texas State Board of Examiners of Psychologists and certified as a Health Service Provider;

Certified Social Worker—Advanced Clinical Practitioner: One certified by the Texas Department of Human Services as a Certified Social Worker with the order of recognition of Advanced Clinical Practitioner;

Licensed Dietitian: One licensed by the Texas State Board of Examiners of Dietitians; [and]

Licensed Professional Counselor: One licensed by the Texas State Board of Examiners of Professional Counselors; and

Licensed Marriage and Family Therapist: One licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(b) Article 21.52, Insurance Code, is amended to read as follows:

Art. 21.52. RIGHT TO SELECT PRACTITIONER UNDER HEALTH AND ACCIDENT POLICIES

Sec. 1. DEFINITIONS. As used in this article:

- (a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;
- (b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C. and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry,

and O.D.;

- (d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic;
- (e) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners;
- (f) "audiologist" means a person who has received a master's or doctorate degree in audiology from an accredited college or university and is certified by the American Speech-language and Hearing Association;
- (g) "speech-language pathologist" means a person who has received a master's or doctorate degree in speech-language pathology from an accredited college or university and is certified by the American Speech-language and Hearing Association to restore speech loss or correct a speech impairment;
- (h) "certified social worker—advanced clinical practitioner" means a person who is certified by the Texas Department of Human Services as a certified social worker with the order of recognition of advanced clinical practitioner;
- (i) "licensed dietitian" means a person who is licensed by the Texas State Board of Examiners of Dietitians; [and]
- (j) "licensed professional counselor" means a person who is licensed by the Texas State Board of Examiners of Professional Counselors; and

(k) "licensed marriage and family therapist" means a person who is licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

Sec. 2. APPLICATION OF THIS ARTICLE. This article applies to and embraces all insurance companies, associations, and organizations, whether incorporated or not, which provide health benefits, accident benefits, or health and accident benefits for medical or surgical expenses incurred as a result of an accident or sickness. Without limiting the foregoing, this article specifically applies to the insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter 3, pertaining to life, health and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies; Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health and accident associations; Chapter 15, pertaining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's Plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies. [This article also applies to health maintenance organizations established pursuant to Chapter 214, Acts of the 64th Legislature, Regular Session, 1975 (Articles 20A.01-20A.33. Insurance Code), as now or hereafter amended.]

Sec. 3. SELECTION OF PRACTITIONERS. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine, a licensed dentist, or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that practitioner, a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry, an audiologist to measure hearing for the purpose of determining the presence or extent of a hearing loss and to provide aural rehabilitation services to a person with a hearing loss if those services or procedures are scheduled in the policy, a speech-language pathologist to evaluate speech and language and to provide habilitative and rehabilitative services to restore speech or language loss or to correct a speech or language impairment if those services or procedures are scheduled in the policy, a certified social worker-advanced clinical practitioner to provide the services that fall within the scope of the license of such certified practitioner and which are specified as services within the terms of the policy of insurance, including the provision of direct, diagnostic, preventive, or clinical services to individuals, families, and groups whose functioning is threatened or affected by social or psychological stress or health impairment, if those services or procedures are scheduled in the policy, a licensed dietitian including a provisional licensed dietitian under a licensed dietitian's supervision to provide the services that fall within the scope of the license of that dietitian if those services are scheduled in the policy, [or] a licensed professional counselor to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy, or a licensed marriage and family therapist to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy. The services of a certified social worker—advanced clinical practitioner, [or] licensed professional counselor, or licensed marriage and family therapist that are included in this Act may require a professional recommendation by a doctor of medicine or doctor of osteopathy unless the health insurance policy terms do not require such a recommendation. The payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, a licensed doctor of chiropractic, a licensed dentist, an audiologist, a speech-language pathologist, a certified social worker—advanced clinical practitioner, a licensed dietitian, [or] a licensed professional counselor, or a licensed marriage and family therapist. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, a doctor of chiropractic, a licensed dentist, an audiologist, a speech-language pathologist, a certified social worker—advanced clinical practitioner, a licensed dietitian, [or] a licensed professional counselor, or a licensed marriage and family therapist which fall within the scope of his license or certification and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act shall be brought into compliance with this Act by the use

of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

SECTION 29. INITIAL APPOINTMENTS. (a) Not later than the 30th day after the effective date of this Act, the executive committee of the Texas Association for Marriage and Family Therapy, Inc., shall submit to the governor a list of qualified candidates for the board, including the names of four qualified marriage and family therapy educators and 12 qualified practicing marriage and family therapists.

(b) In making the initial appointments to the board, the governor shall designate three members for terms expiring in 1993, three members for terms expiring in 1995, and three members for terms expiring in 1997.

SECTION 30. EFFECTIVE DATE FOR LICENSE REQUIREMENT. (a) A person is not required to hold a license under this Act to practice as a marriage and family therapist in this state before March 1, 1992.

- (b) The board may issue a license, without requiring an examination, to a person who:
 - (1) applies to the board not later than September 1, 1993;

(2) is at least 18 years old;

(3) has submitted a completed application as required by the board, accompanied by the application fee;

(4) is of good moral character;

(5) has at least three years of clinical experience in the practice of marriage and family therapy, under supervision satisfactory to the board; and (6) possesses the education or certification specified in Subsection (c)

of this section. (c) To be eligible for a license without examination under this section a person

- (1) hold a master's or doctorate degree from a regionally accredited institution of higher education in:
 - (A) marriage and family therapy; or
 - (B) a related mental health discipline;
 - (2) be licensed or certified by this state in a mental health discipline;

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- (3) be certified by an appropriate professional organization having appropriate certification standards.
- (d) The board may require that statements in the application required under Subsection (b)(3) of this section be made under oath.

SECTION 31. EFFECTIVE DATE; CREATION OF BOARD. (a) This Act takes effect September 1, 1991.

- (b) Section 2(B), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas Insurance Code), and Article 21.52, Insurance Code, as amended by this Act, apply only to a health insurance policy that is delivered, issued for delivery, or renewed on or after March 1, 1992. A health insurance policy that is delivered, issued for delivery, or renewed before September 1, 1991, is governed by the law that existed at the time that the policy was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose. A health insurance policy that is delivered, issued for delivery, or renewed after August 31, 1991, but before March 1, 1992, is governed by the law that existed immediately before the effective date of this Act and that law is continued in effect for that purpose.
- (c) The Texas State Board of Examiners of Marriage and Family Therapists is created on the effective date of this Act.

SECTION 32. APPROPRIATION. All fees collected under this Act for the biennium ending August 31, 1993, are appropriated to the Texas Department of Health for the purposes of administering this Act for the biennium ending August 31, 1993.

SECTION 33. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendment to S.B. 181 by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON **HOUSE BILL 524 ADOPTED**

Senator Carriker called from the President's table the Conference Committee Report on H.B. 524. (The Conference Committee Report having been filed with the Senate and read on Friday, May 17, 1991.)

On motion of Senator Carriker, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION ON FIRST READING

On motion of Senator Lyon and by unanimous consent, the following resolution was introduced, read first time and referred to the Committee indicated:

S.C.R. 158 by Lyon

Administration

Creating a joint interim study committee to be designated as the Legislative Law Enforcement Study Committee.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

- H.J.R. 68, To Committee on State Affairs.
- H.J.R. 90, To Committee on Intergovernmental Relations.
- H.B. 735, To Committee on Education.
- H.B. 743, To Committee on Economic Development.
- H.B. 1078, To Committee on Intergovernmental Relations.
- H.B. 1189, To Committee on State Affairs.
- H.B. 1843, To Committee on Jurisprudence.
- H.B. 1850, To Committee on Finance.
- H.B. 1887, To Committee on Economic Development.
- H.B. 2029. To Committee on Health and Human Services.
- H.B. 2061, To Committee on Economic Development.
- H.B. 2151, To Committee on Health and Human Services.
- H.B. 2152, To Committee on Education.
- H.B. 2243, To Committee on State Affairs.H.B. 2273, To Committee on Health and Human Services.
- H.B. 2373, To Committee on Jurisprudence.
- H.B. 2376, To Committee on Economic Development, Subcommittee on Insurance.
- H.B. 2660, To Committee on Jurisprudence.
- H.B. 2739, To Committee on Economic Development.
- H.B. 2813, To Committee on Jurisprudence.
- H.B. 2850, To Committee on Economic Development.
- H.B. 2904, To Committee on Jurisprudence.

SENATE BILL 1426 WITH HOUSE AMENDMENTS

Senator Turner called S.B. 1426 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate. Committee Amendment - Hury

Amend S.B. 1426 by deleting SECTION 3 on page 1, line 24 and SECTION 4 on page 2, line 1 and inserting a new SECTION 3 to read as follows:

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment - Uher

Amend S.B. 1426, SECTION 1, as follows:

On page 1, line 11, delete the period after the word "record" and add the phrase "which were recorded prior to January 1 of the year the tax lien arose."; and on page 1, line 22, substitute a comma for the period after the word "sale" and add the phrase "if such covenants or easements were recorded prior to January 1 of the year the tax lien arose."

The amendments were read.

Senator Turner moved to concur in the House amendments to S.B. 1426.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1539 WITH HOUSE AMENDMENT

Senator Turner called S.B. 1539 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Stiles

Amend S.B. 1539 by striking and deleting SECTION 9 thereof and substituting therefor the following:

SECTION 9. Subdivision (2), Subsection (c), Section 19, Texas Manufactured Housing Standards Act (Article 522lf, Vernon's Texas Civil Statutes) is amended to read as follows:

- (2) The commissioner may not refuse to issue a document of title, and may not suspend or revoke a document of title, unless:
- (A) the application contains any false or fraudulent statement, or the applicant has failed to furnish information required by the commissioner, or the applicant is not lawfully entitled to the issuance of a document of title;
- (B) the commissioner has reasonable basis to believe that the manufactured home has been stolen or unlawfully converted, or the issuance of a document of title would constitute a fraud against the rightful owner or a lienholder;
- (C) the commission has reasonable basis to believe that the manufactured home is "salvaged" as defined in Section 8 of this article and a salvage title has not been applied for;
 - (D) the required fee has not been paid; [or]
- (E) a state tax lien has been recorded as filed by the comptroller pursuant to Subsection (h) of this section; or
- (F) a local tax lien has been filed and recorded pursuant to Section 32.015, Title 1, Property Tax Code.

SECTION 10. Subsection (a), Section 25.03, Title 1, Property Tax Code, is amended to read as follows:

(a) Property shall be described in the appraisal records with sufficient certainty to identify it. The description of a manufactured home shall include the correct identification or serial number of the home or the HUD label number or the state seal number.

SECTION 11. Subsections (b), (c), (d), and (e), Section 32.015, Title 1, Property Tax Code, are amended to read as follows:

- (b) The collector may simultaneously file notice of tax liens of all the taxing units served by the collector. However, notice of any lien for taxes for the prior calendar year must be filed with the Texas Department of Licensing and Regulation prior to September 1 [May 1] of the following year. Any lien for which the notice is not filed by such date is extinguished and is not enforceable.
- (c) If the identification or serial number or the HUD label number or state seal number of the home [information] on the tax lien notice matches that of the title of record, the Texas Department of Licensing and Regulation shall record the [a] tax lien on the title records of the manufactured home [notice filed under this section and shall thereafter indicate the existence of the lien on any document of title for the manufactured home issued by the commissioner of licensing and regulation under Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), until the collector for the taxing unit files a notice under Subsection (c) of this section canceling the notice.] Simultaneously with the recording of a tax lien, the Texas Department of Licensing and Regulation must mail a notice of a tax lien to any other lienholders of record.
- (d) For all manufactured homes sold, or to which ownership is transferred, after December 31, 1985, the recording of a tax lien [notice filed] under this section constitutes constructive notice of the existence of the lien to all purchasers of the manufactured home who purchase it after the date or recordation of the lien and before a tax certificate or paid tax receipt is filed pursuant to [the collector for the taxing unit files a notice under] Subsection (e) of this section canceling the lien [notice].
- (e) On payment of the taxes, penalties, and interest for a year for which a valid tax lien has been recorded on the title records of the Texas Department of Licensing and Regulation, the collector for the taxing unit shall issue a tax certificate showing no taxes due or a tax paid receipt for such year to the person making payment. When the tax certificate showing no taxes due or tax paid receipt is filed with the Texas Department of Licensing and Regulation, the tax lien is extinguished and canceled and shall be removed from the title records of the manufactured home [If a tax lien for which notice has been filed under this section ceases to exist, the collector for the taxing unit shall file a notice with the Texas Department of Licensing and Regulation stating that the lien on longer exists. The collector shall file the notice not later than the 10th day after the date of payment of the taxes subject to the lien].

SECTION 12. Section 32.03, Title 1, Property Tax Code, is amended to read as follows:

32.03. Restrictions on Personal Property Tax Lien

- (a) A tax lien may not be enforced against personal property transferred to a bona fide purchase for value who does not have actual notice of the existence of the lien, or if the <u>personal</u> property is a manufactured home, who does not have constructive notice of the lien.
- (b) A bona fide purchaser for value or the holder of a lien recorded on the manufactured home document of title is not required to pay any taxes, penalties, or interest except for those years for which a valid tax lien has been duly filed and recorded pursuant to the provisions of Sec. 32.015 of this title. A "manufactured home" has the meaning set forth in Sec. 32.015(g) of this title.

SECTION 13. Subsection D, Article 6701-1/2, Title 116, Revised Statutes (Article 6701-1/2, Vernon's Texas Civil Statutes) is amended to read as follows:

D. A fee of Fifteen Dollars (\$15) for each permit shall be collected by the State Department of Highways and Public Transportation and deposited in the Treasury of the State of Texas to the credit of the General Revenue Fund. On application said department shall issue permit books or packets containing twenty (20) individual permits provided that the aggregate fee of Fifteen Dollars (\$15) per permit is received with such application. The book-type permit can be used for the movement of any manufactured home regardless of width, length, or height, and route approval can be secured by telephone from the issuing office along with any required validation number for the permit. In lieu of the permit books or packets, said department may establish an escrow account for the payment of permit fees.

SECTION 14. Subsection (d), Subdivision 7, Section 5, Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.05, Vernon's Texas Civil Statutes), is amended

to read as follows:

(d) The creditor may not retain all, or any portion, of a deposit except as a down payment, or part thereof, in a completed sales transaction unless the consumer is [shall be] given conspicuous written notice of the deposit requirements of this section in a type size equal to at least eight point. The consumer must sign the notice and receive a copy at the time of making the deposit. The acceptance of a down payment in excess of the deposit limits set forth in this section is not a violation of this chapter.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Turner moved to concur in the House amendment to S.B. 1539.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 582 WITH HOUSE AMENDMENT

Senator Turner called S.B. 582 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Hernandez

Amend S.B. 582 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to a center for the support of a comprehensive database network to further the state's goal of economic diversification; authorizing appropriations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Subchapter D, Chapter 88, Education Code, is amended by amending Sections 88.401 through 88.405 and 88.409 through 88.412 and adding Section 88.413 to read as follows:

Sec. 88.401. DEFINITIONS.

- (1) "Center" means the lead regional innovation center of TIINS.
- (2) "Board" means the board of directors of TIINS.
- (3) "Committee" means the advisory committee to TIINS.
- (4) "Regional centers" means any innovation center established by the board other than the lead regional innovation center.

(5) "Headquarters" means the administrative headquarters of TIINS.

(6) "Director" means the executive director of TIINS.

Sec. 88.402. ORGANIZATION. [(a)] TIINS shall be governed by a board of directors as outlined in the bylaws of the Texas Innovation Information Network System, a nonprofit organization under Section 501(c)(3) of the federal Internal Revenue Code of 1986, organized in the State of Texas as a public/private

Sec. 88.403. POWERS OF THE BOARD OF DIRECTORS. The powers of

the board shall include but not be limited to the following:

(1) to determine the scope of TIINS activities and to set policy guidelines:

(2) to establish new regional innovation centers and to relocate

existing centers as appropriate; and

(3) to allocate resources and funds appropriated by the state for the purposes of this Act [among existing regional innovation centers].

Sec. 88.404. ADVISORY COMMITTEE. (a) The TIINS Advisory Committee is established to advise and make recommendations to the director and the board on the operations and activities of TIINS.

(b) The [initial committee is composed of individuals who served as advisory

committee members immediately prior to the effective date of this Act.

[(c) In addition, the] committee includes the chairman of the House Science and Technology Committee or his designee and a designee of the lieutenant governor. Advisory Committee members will be selected from state agencies, the private sector, colleges, universities, community colleges, and technical institutes. The director, in consultation with the board, may appoint additional committee members at any time.

(c)[(d)] The committee members serve terms of two years and all [except that three members of the initial committee serve only one year. The terms of office for the initial committee commence on the effective date of this Act. All] committee

members are eligible for reappointment to consecutive terms.

(d)[(e)] When the term of office of a committee member expires or a vacancy occurs on the committee, the board may appoint [members of the committee shall elect] a successor based on the current requirements of TIINS [to the position. Election to the committee requires a majority vote of all of the members of the committee. Each member of the committee serves until his successor has been

Sec. 88.405. GOALS AND OBJECTIVES [AND DUTIES] OF [THE]

TIINS. (a) The objectives [and duties] of TIINS are as follows:

(1) to establish and operate a database and information service which provides in a timely and efficient manner:

(A) access to current scientific information;

(B) access to Texas research centers at educational

institutions and in the private sector;

(C) access to scientific and engineering capabilities;

(D)[(C)] access to advanced technology company products, services, capabilities, and needs;

(E)[(D)] access to the services of professional groups;

and

(F)[(E)] access to vocational continuing [education] and professional education and training programs; and

(G) access to public sources of assistance to businesses;

(2) to increase the number of innovations occurring in Texas;

(3) to improve university and industry interactions;

(4) to reduce the average time it takes for innovations to be commercialized; [and]

(5) to improve the state's research competitiveness; and

(6) to develop and maintain a database, as resources allow, of licensable technologies and intellectual property rights by working with Texas

universities and companies.

(b) In accomplishing its goals and objectives TIINS will coordinate with the Texas Department of Commerce Product Development Fund activities and with other databases and technology development efforts in the state to better enable Texas to compete in the global economy.

Sec. 88.409. [HNITIAL] REGIONAL INNOVATION CENTERS. The TIINS board of directors may establish regional innovation centers for the purpose of providing greater access to TIINS information products and services.

Regional [The initial regional] innovation centers are currently [shall be]

located at: (1) Texas Tech University at Lubbock;

(2) The [North Texas Commission;

[(3) Gulf Coast] Small Business Development Center at the University of [in] Houston;

(3)[(4)] the Technology Business Development Division of the Texas Engineering Experiment Station in College Station;

(4) the Institute for Studies in Business/The [(5) Texas Research and Technology Foundation/The University of Texas at San Antonio;

(5) the Technology Business Incubator affiliated with [(6)] The University of Texas at Austin;

(6)[(7)] The University of Texas at Tyler;

(7)[(8) Corpus Christi State University at Corpus Christi; and

(9) The University of Texas at El Paso;

(8) Texas State Technical Institute System; and

(9) the Automation and Robotics Research Center at The University of Texas at Arlington.

Sec. 88.410. REPORTS. (a) The regional centers and headquarters shall submit annual reports to the center. The reports shall contain the following information:

- the number of records in [on] the TIINS database;
- (2) the percentage annual growth in the database;

(3) the number of inquiries to the database;

- (4) the changes and improvements in system design and a description of TIINS products and services;
- (5) the amount of public and private nonstate financial and in-kind support received by TIINS [the regional centers]; and

(6) examples, as available, of successful public-private partnerships resulting from use of TIINS' products and services.

(b) The center shall compile the information received from TIINS headquarters and the regional centers and submit a report to the Texas Engineering Experiment Station which shall be included in the experiment station's annual report to the state. The center shall include in its report those items enumerated in Subdivisions

(1) through (5) of Subsection (a) of this section.

Sec. 88.411. FEES. The board may charge fees for the services provided by TIINS through the center, any regional center, or the headquarters to any user of

[the] TIINS products and services [system].

Sec. 88.412. FUNDING. The Texas Innovation Information Network System shall be supported by fees for services provided to both public and private users. However, the legislature may appropriate funds as they deem necessary to support the development of new or expanded services or to support the continuation of TIINS services not supported fully by user fees but which are desirable to maintain for the purpose of this Act [legislature is authorized to appropriate not more than \$250,000 per year for two years to the Texas Engineering Experiment Station for the development of THNS. After this development period, the Texas Innovation Information Network System shall be supported by fees for services provided to both public and private users].

Sec. 88.413. APPLICATION OF SUNSET ACT. TIINS is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, TIINS is abolished and this Act expires September 1, 1999.

SECTION 2. Section 2, Chapter 675, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Turner moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 582 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Turner, Chair; Dickson, Carriker, Whitmire, Moncrief.

CONFERENCE COMMITTEE ON HOUSE BILL 1367

Senator Krier called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1367 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1367 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Krier, Chair; Brooks, Moncrief, Ratliff, Johnson.

SENATE JOINT RESOLUTION 6 WITH HOUSE AMENDMENTS

Senator Leedom called S.J.R. 6 from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate

Committee Amendment - Robnett

Amend S.J.R. 6 by substituting the following:

A JOINT RESOLUTION

proposing a constitutional amendment relating to investments by statewide public retirement systems.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Article XVI, Section 67(a)(3), of the Texas Constitution is amended to read as follows:

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such manner [securities] as the board may consider prudent [investments]. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. [The legislature by law may further restrict the investment discretion of a board].

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 5, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to allow the board of trustees of a statewide public retirement system to invest funds of the system in a manner that the board considers prudent."

Amendment - Sutton

Amend C.S.S.J.R. 6 in Subdivision (3) by striking "[The legislature by law may further restrict the investment discretion of a board.]" and substituting "The legislature by law may further restrict the investment discretion of a board."

Amendment - Yarbrough

Amend C.S.S.J.R. 6, at the end of subdivision (3), by adding the following: The investments made in real estate may not exceed 20 percent of the funds of the system.

The amendments were read.

Senator Leedom moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.J.R. 6 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Leedom, Chair; Lucio, Sims, Henderson, Zaffirini.

SENATE JOINT RESOLUTION 42 WITH HOUSE AMENDMENTS

Senator Green called S.J.R. 42 from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate.

Committee Amendment - Berlanga

Amend S.J.R. 42 by substituting the following:

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a county education district by election to adopt certain residence homestead exemptions and to provide for the taxation of certain tangible personal property.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Article VIII, Section 1-b(e), of the Texas Constitution is amended to read as follows:

(e) The governing body of a political subdivision, other than a county education district, may exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone. In the manner provided by law, the voters of a county education district at an election held for that purpose may exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone. The percentage may not exceed [forty percent (40%) for the years 1982 through 1984, thirty percent (30%) for the years 1985 through 1987, and twenty percent [(20%) in 1988 and each subsequent year]. However, the amount of an exemption authorized pursuant to this subsection may not be less than Five Thousand Dollars (\$5,000) unless the legislature by general law prescribes other monetary restrictions on the amount of the exemption. An eligible adult is entitled to receive other applicable exemptions provided by law. Where ad valorem tax has previously been pledged for the payment of debt, the governing body of a political subdivision may continue to levy and collect the tax against the value of the homesteads exempted under this subsection until the debt is discharged if the cessation of the levy would impair the obligation of the contract by which the debt was created. The legislature by general law may prescribe procedures for the administration of residence homestead exemptions.

SECTION 2. Article VIII, Section 1-b(b), of the Texas Constitution is amended to read as follows:

(b) The [From and after January 1, 1973, the] governing body of any county, city, town, school district, or other political subdivision of the State, other than a county education district, may exempt by its own action not less than Three Thousand Dollars (\$3,000) of the market value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor or of married or unmarried persons sixty-five (65) years of age or older, including those living alone, from all ad valorem taxes thereafter levied by the political subdivision. As an alternative, upon receipt of a petition signed by twenty percent (20%) of the voters who voted in the last preceding election held by the political subdivision, the governing body of the subdivision shall call an election to determine by majority vote whether an amount not less than Three Thousand Dollars (\$3,000) as provided in the petition, of the market value of residence homesteads of disabled persons or of persons sixty-five (65) years of age or over shall be exempt from ad valorem taxes thereafter levied by the political subdivision. In the manner provided by law, the voters of a

county education district at an election held for that purpose may exempt an amount not less than Three Thousand Dollars (\$3,000), as provided in the petition, of the market value of residence homesteads of disabled persons or of persons sixty-five (65) years of age or over from ad valorem taxes thereafter levied by the county education district. An eligible disabled person who is sixty-five (65) years of age or older may not receive both exemptions from the same political subdivision in the same year but may choose either if the subdivision has adopted both. Where any ad valorem tax has theretofore been pledged for the payment of any debt, the taxing officers of the political subdivision shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created. An exemption adopted under this subsection based on assessed value is increased, effective January 1, 1979, to an amount that, when converted to market value, provides the same reduction in taxes, except that the market value exemption shall be rounded to the nearest \$100

SECTION 3. Article VIII, Section 1(e), of the Texas Constitution is amended to read as follows:

(e) The governing body of a political subdivision, other than a county education district, may provide for the taxation of all property exempt under a law adopted under Subdivision (2) of Subsection (d) of this section and not exempt from ad valorem taxation by any other law. In the manner provided by law, the voters of a county education district at an election held for that purpose may provide for the taxation of all property exempt under a law adopted under Subdivision (2) of Subsection (d) of this section and not exempt from ad valorem taxation by any other law

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held August 10, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to allow the voters of a county education district to adopt certain exemptions from the district's ad valorem taxation for residence homesteads and to provide for the taxation of certain tangible personal property."

Amendment - Schoolcraft

Amend C.S.S.J.R. 42 by adding a new SECTION 4 to read as follows and renumbering subsequent sections of the resolution appropriately:

SECTION 4. Article VIII, of the Texas Constitution is amended by adding Section 1-b-1 to read as follows:

Sec. 1-b-1. The references to a county education district in Sections 1 and 1-b of this article do not validate county education districts.

The amendments were read.

Senator Green moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.J.R. 42 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Green, Chair; Whitmire, Zaffirini, Haley, Parker.

SENATE BILL 831 WITH HOUSE AMENDMENTS

Senator Barrientos called S.B. 831 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Black

Amend S.B. 831 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation, functions, and change of the name of the State Purchasing and General Services Commission, the transfer of responsibility for architectural barrier programs from the commission to the Texas Department of Licensing and Regulation, the transfer of responsibility for the personal property accounting system from the commission to the comptroller, and the acquisition by

the commission and other entities of property and services; providing penalties. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: PART 1. ADMINISTRATION OF GENERAL SERVICES COMMISSION SECTION 1.01. Subdivision (1), Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Commission" means the [State Purchasing and] General Services Commission.

SECTION 1.02. Section 2.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. COMMISSION. The [State Purchasing and] General Services

Commission is an agency of the state [established].

SECTION 1.03. Section 2.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02. MEMBERSHIP. The commission is composed of six [three] members appointed by the governor with the advice and consent of the senate. All members must be representatives of the general public. Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. A person is not eligible for appointment if the person or the person's spouse:

(1) is employed by or participates in the management of a business

entity or other organization that contracts with the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that contracts with the state; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 1.04. Section 2.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.03. TERMS. Members of the commission hold office for staggered terms of six years, with two members' terms [a member's term] expiring on January 31 of each odd-numbered year.

SECTION 1.05. Section 2.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Four [Two] members of the commission constitute a quorum.

(d) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

SECTION 1.06. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.051 to read as follows:

Sec. 2.051. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) violates a prohibition established by Section 2.061 of this Act;

(2) cannot discharge the member's duties for a substantial part of the

term for which the member is appointed because of illness or disability; or (3) is absent from more than half of the regularly scheduled

commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that

it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 1.07. Section 2.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection

(b) and adding Subsections (e) through (k) to read as follows:

- (b) The executive director shall manage the affairs of the commission subject to and under the direction of the commission, except for capitol security matters as provided by Section 4.12(g) of this Act. All direction of the commission to the executive director shall be made at an open meeting of the commission and made a part of the minutes of the commission. A member of the commission may not grant any authority to the executive director or any other employee by power of
- (e) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(f) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

- (g) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.
- (h) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.
- (i) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:
- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;
- (2) a comprehensive analysis of the commission work force that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to address appropriately those areas of significant underutilization.

(j) A policy statement prepared under Subsection (i) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(k) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (j) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 1.08. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.061 to read as follows:

Sec. 2.061. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association of business entities that contracts with the state may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association of business entities that contracts with the state may not be a commission member and may not be a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission or a business entity that contracts with the state.

SECTION 1.09. Section 2.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. APPLICATION OF SUNSET ACT. The commission is subject to [the Texas Sunset Act (]Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter [Act], the commission is abolished and this Act expires September 1, 2003 [1991].

SECTION 1.10. Section 2.08, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.08. <u>REPORTS</u> [REPORT]. (a) Not later than the 30th day after the date on which each regular session of the legislature begins, the commission shall report to the legislature concerning the activities of the commission during the preceding legislative interim and shall recommend any amendments to current law that would result in an increase in efficiency, economy, or productivity in the areas monitored by the commission.

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 1.11. Article 2, State Purchasing and General Services Act

SECTION 1.11. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.10 to read as follows:

Sec. 2.10. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a)
The commission shall prepare information of public interest describing the

functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission by rule shall establish methods by which consumers, service recipients, and persons contracting with the state under authority of this Act are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve. If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice

would jeopardize an undercover investigation.

(c) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the commission's programs.

PART 2. COMMISSION FUNCTIONS UNDER THE STATE PURCHASING AND GENERAL SERVICES ACT

SECTION 2.01. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.11 to read as follows:

Sec. 2.11. DISADVANTAGED BUSINESSES. (a) The commission shall establish a disadvantaged business program consistent with the General Appropriations Act and general law.

(b) The commission shall:

(1) set and strive to meet annual goals for the awarding of contracts to disadvantaged businesses;

(2) attempt to identify disadvantaged businesses in the state that provide or have the potential to provide supplies, materials, equipment, or services to the state;

(3) take steps to assist and encourage disadvantaged businesses located in this state to bid for contracts with the state;

(4) give disadvantaged businesses full access to the commission's bidding and proposal process;

(5) inform and offer assistance to disadvantaged businesses regarding the commission's bidding and proposal process; and

(6) identify barriers to participation by disadvantaged businesses in the commission's bidding and proposal process.

(c) The commission shall appoint an advisory committee with at least three members composed of owners of disadvantaged businesses. A committee member serves at the will of the commission. A committee member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee. The committee shall study the commission's rules and procedures that relate to bidding, purchasing, and contracting with the state in general. The committee shall recommend changes in law to the legislature and changes in rules to the commission that are necessary to facilitate the participation of disadvantaged businesses in state contracting. The commission shall issue a report outlining such recommendations and outlining the results of efforts undertaken by the commission pursuant to Subsection (b) of this section. The report shall be submitted to the governor and to the presiding officer of each house of the legislature prior to January 1, 1993.

(d) This section does not exempt the commission from competitive

procurement requirements provided by law.

SECTION 2.02. Subsections (a), (c), (e), and (f), Section 3.08, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) State agencies are delegated the authority to purchase supplies, materials, and equipment if the purchase does not exceed \$5,000 [\$500]. The commission by rule shall prescribe procedures for these purchases, and by rule may delegate to state agencies the authority to purchase supplies, materials, or equipment if the purchase exceeds \$5,000 [\$500].

(c) Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed \$1,000 [\$100], or a

greater amount prescribed by rule of the commission.

(e) Large purchases may not be divided into small lot purchases in order to meet the specified dollar limits. The commission may not require that unrelated purchases be combined into one purchase order in order to exceed the specified dollar limits.

(f) Agencies making purchases under this section for which competitive bidding is required must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased and must comply with Section 3.101 of this article.

SECTION 2.03. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.101

to read as follows:

Sec. 3.101. BIDDERS LISTS. (a) This section:

(1) applies to all purchases under this article for which competitive

bidding or competitive sealed proposals are required;

(2) applies to all state agencies that make purchases under this article, including the commission and agencies that make purchases under Section 3.06 of this article; and

(3) does not apply to purchases made by the commission under

Section 3.11 of this article.

(b) The commission shall develop a uniform registration form for application to do business with the commission or with any state agency. The registration forms shall constitute a valid application for a bidders list by all state agencies. Nothing in this subsection shall be construed as preventing any state agency from developing and using its own registration form, but such forms shall not be required in addition to or in lieu of the uniform registration form developed by the commission.

(c) Each state agency shall maintain a bidders list and annually register on the list the name and address of each vendor that applies for registration in accordance with rules adopted under this section. An agency may include other relevant vendor information on the list. Each agency shall solicit bids or proposals from all eligible vendors on the list, as provided by this section, when the agency proposes to make a purchase that will cost more than \$5,000.

(d) A state agency may charge applicants for registration a fee and may charge registrants an annual renewal fee in an amount designed to recover the agency's costs in developing and maintaining its bidders list and in soliciting bids or proposals under this section. An agency shall set the amount of the fees by rule.

(e) Each state agency shall adopt procedures for developing and maintaining its bidders list and procedures for removing inactive vendors from the list.

(f) Each state agency shall establish by rule a vendor classification process under which only vendors that may be able to make a bid or proposal on a particular purchase are solicited under this section.

(g) The commission may establish by rule a process under which the requirement for soliciting bids or proposals from eligible vendors on the bidders list

may be waived for appropriate state agencies or appropriate purchases in circumstances in which the requirement is not warranted. The commission also may assist state agencies regarding issues that arise under this section.

SECTION 2.031. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.102

to read as follows:

Sec. 3.102. CERTAIN BIDS AND CONTRACTS PROHIBITED. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the bid or contract is based. A bidder or contract participant may provide free technical assistance to an agency under this section.

SECTION 2.04. Subsection (b), Section 3.11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as

follows:

(b) Bidders List. The commission shall maintain a bidders list and shall add or delete names from the list by the application and utilization of applicable standards set forth in Subsection (e) of this section. Bid invitations shall be sent only to those who have expressed a desire to bid on the particular types of items which are the subject of the bid invitation. Use of the bidders list shall not be confined to contract purchases but it may be used by the commission [as it may find desirable] in making any purchase.

SECTION 2.05. Section 3.17, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 3.17. SPECIFICATIONS AND STANDARDS PROGRAM; TEST AND INSPECTION PROGRAM. (a) The commission shall have the authority to establish and maintain a specifications and standards program to coordinate the establishment and maintenance of uniform standards and specifications for materials, supplies, and equipment purchased by the commission. The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of materials, supplies, and equipment may be continuously accomplished.
- (b) The commission shall [may also] establish and maintain a program of testing and inspecting to ensure that materials, supplies, services, and equipment meet specifications, and may make contracts for testing. If any state agency determines that any supplies, materials, services, or equipment received do not meet specifications, it shall promptly notify the commission in writing detailing the reasons why the supplies, materials, services, or equipment do not meet the specifications of the contract. The commission shall immediately determine whether or not the reported supplies, materials, services, or equipment meet specifications. The sole power to determine whether materials, supplies, services, and equipment meet specifications shall rest with the commission. The commission shall adopt rules that provide for the inspecting and testing of costly purchases that the commission determines should be inspected and tested. When the commission finds that contract specifications or conditions have not been complied with, it shall take action, with the assistance of the attorney general, if necessary, against the defaulting contractor.

SECTION 2.06. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.181 to read as follows:

Sec. 3.181. STATEWIDE OR REGIONAL SERVICES CONTRACTS; COMMISSION STUDIES. (a) The commission annually shall

select for study at least one service that is purchased by one or more state agencies. The commission shall study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. The commission shall give priority to studying services for which the commission has delegated the purchasing function to many state agencies.

(b) The commission is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

SECTION 2.0605. Section 3.19, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows: Sec. 3.19. CONFLICT OF INTEREST. No member of the commission or

Sec. 3.19. CONFLICT OF INTEREST. No member of the commission or any employee or appointee of the commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to any agency of the State of Texas. Neither shall any member or employee or appointee accept or solicit any gift or service that would reasonably tend to influence the person in the discharge of official duties or that the person knows or should know is being offered with the intent to influence official conduct[, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly; by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation, or contract for future reward or compensation from any such party].

SECTION 2.061. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.201 to read as follows:

Sec. 3.201. PREFERENCE FOR PRODUCTS MADE FROM RECYCLED MATERIALS. The commission shall give preference to products made of recycled materials in purchases made under this Act if:

(1) the products meet state specifications as to quantity and quality;

and

(2) the cost of the product is equal to or less than the cost of other similar products that are not made of recycled materials.

SECTION 2.07. Section 3.23, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.23. CONTRACTS WITH DEPARTMENT OF <u>CRIMINAL JUSTICE</u> [CORRECTIONS]. The commission is [hereby] authorized to make contracts with the Texas Department of <u>Criminal Justice</u> [Corrections] for the purchase of supplies, equipment, services, and materials for use by other state agencies.

SECTION 2.071. Section 3.29, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsections (g) and (h) to read as follows:

- (a) A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 160 [145] SAE net horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.
- (g) In this section, a vehicle is considered to be capable of using compressed natural gas or other alternative fuels if the vehicle is capable of using compressed natural gas or other alternative fuels either in its original equipment engine or in an engine that has been converted to use compressed natural gas or other alternative fuels after September 1, 1991, unless the time for compliance is extended pursuant to Subsection (h) of this section.

(h) The commission may extend the date by which a vehicle powered by a traditional gasoline or diesel engine shall be capable of using compressed natural gas or other alternative fuels as required under this section for one or more periods of 90 days, but not beyond September 1, 1992, if it finds a lack of ability to acquire such vehicles with original alternative fuels equipment or to convert such vehicles to use compressed natural gas or other alternative fuels.

SECTION 2.08. Subsections (g) and (m), Section 4.12, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to

read as follows:

(g)(1) The commission shall carry out the provisions of this section through a chief of Capitol security, selected by the executive director of the commission in accordance with Section 2.06 of this Act. The chief of Capitol security may be a commissioned peace officer and shall hold the position of a division director of the commission, exempt from the state employees classification system, reporting directly to the executive director of the commission. Direct supervisory responsibility for commissioned peace officers shall entitle the executive director to benefits under Section 814.107, Government Code, considering years of service as a member of the Employees Retirement System of Texas to constitute years of

service credit for the purpose of that section.

(2) The commission is authorized to employ other security officers for the purpose of assisting the chief in carrying out the provisions of this section and may commission such security officers as it deems necessary as peace officers. When so commissioned, said officers are [hereby] vested with all the powers, privileges, and immunities of peace officers; provided, that the chief and each security officer shall take and file the oath required of peace officers and shall execute and file with the commission a good and sufficient bond in the sum of \$1,000 payable to the governor of this state and his successors in office with two or more good and sufficient sureties conditioned that he will fairly and faithfully perform all of the duties as may be required of him by law, and that he will fairly and impartially enforce the law of this state and that he will pay over any and all money, or turn over any and all property, to the proper person legally entitled to the same, that may come into his possession by virtue of such office. Said bond shall not be void for the first recovery but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor punishable as provided in this section for any person or persons to impersonate the chief or any of said officers.

(m) Nothing herein contained shall be construed to abridge the authority of the commission to grant permission to use [the capitol grounds and] any grounds adjacent to any state building for such use as may be provided by preexisting law.

SECTION 2.09. Subsection (I), Section 4.15, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 1244, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Subsection (m) and amended to read as follows:

(m) [(t)] If the commission determines under Section 5.34 of this Act that the purchase of an existing building is more advantageous to the state than the construction of a new building but a purchase of the building would be subject to existing leases that exceed 15 percent of the total space in the building, the commission may purchase the building subject to existing leases notwithstanding Subsection (c) of this section. When an existing lease expires, the commission may renew the lease subject to this section, including Subsection (c).

SECTION 2.10. Subsection (a), Section 5.01A, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to

read as follows:

- (a) In acquiring real property, each using agency of the state, other than those specifically excluded by Sections 5.13 and 5.14 of this article, shall give first consideration to a building that is a historic structure under Section 442.001, Government Code [8, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957 as amended (Article 6145, Vernon's Texas Civil Statutes)], or to a building that has been designated a landmark by the local governing authority, if the building meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.
- SECTION 2.11. Section 5.12, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:
- Sec. 5.12. DEFINITIONS. The following terms whenever used or referred to in this article shall have the following meanings, except in those instances where the context clearly indicates otherwise:
- (1) "Using agency" means any instrumentality of the state which shall occupy and make use of a state-owned or state-leased building, and for the purpose of this article the commission shall be considered as the using agency for [the state capitol, the governor's mansion and for all other] state-owned buildings maintained by the commission.
- (2) ["Commission" means the State Purchasing and General Services Commission.
- [(3)] "Project" means any building construction project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, which shall be financed in whole or in part by specific appropriation, bond issue or federal funds. The term "project" shall include the construction of any building or any structure or any facility or utility appurtenant thereto, including original equipment and original furnishings thereof, and of any addition to, alteration, rehabilitation, or repair of any existing building or any structure, or any facility or utility appurtenant thereto.
- (3) [(4)] "Project analysis" refers to work done prior to legislative appropriation for a project for the purpose of developing a reliable estimate of the cost of a project to be requested of the legislature.
- (4) [(5)] "Cost of a project" includes, but shall not be limited to, the cost of all real estate, properties, rights and easements acquired, utility services, site development, the cost of construction and the initial furnishing and equipment thereof, all architectural and engineering and legal expenses, the cost of surveys and plans and specifications, and such other expenses, including those incurred by the commission, as are necessary or incident to determining the feasibility or practicability of any project.
- (5) [(6)] "Construction" means and includes acquisition, construction, and reconstruction.
- (6) [(7)] "Rehabilitation" means and includes renewal, restoration, extension, enlargement, and improvement.

 (7) [(8)] "Equipment" and "furnishings" mean and include any
- (7) [(8)] "Equipment" and "furnishings" mean and include any equipment and furnishings whatsoever as may be necessary and required for the use of a project.
- (8) [(9)] "Architect/engineer" means a person registered as an architect pursuant to Chapter 478, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 249a of Vernon's Texas Civil Statutes), and/or a person registered as a professional engineer pursuant to Chapter 404, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 3271a of Vernon's Texas Civil Statutes), employed to provide professional architectural or engineering services and having overall responsibility for the design of a project. The term "architect/engineer" standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the

commission on a salary basis or an architect/engineer in private practice retained for a specific project under a contractual agreement with the commission. The term "private architect/engineer" shall specifically and exclusively refer to a registered architect or a registered engineer in private practice retained for a specific project under a contractual agreement with the commission.

(9) [(10)] "Stage construction" means the construction of a project in phases, each phase resulting in one or more buildings or structures which individually or together shall be capable of use regardless of whether subsequent

phases of the project are authorized or not.

SECTION 2.11A. Section 481.143, Government Code, is amended to read as

follows:

Sec. 481.143. UNIFORMITY OF REQUIREMENTS. (a) The approval, disapproval, or conditional approval of an application for a permit shall be considered by each regulatory agency solely on the basis of any orders, regulations, ordinances, or other duly adopted requirements in effect at the time the original application for the permit is filed. If a series of permits is required for a project, and if construction of the project is initiated within one year after the first permit is approved, the orders, regulations, ordinances, or other requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. The project will be considered to have been initiated if plans are prepared and the ground is broken. The project must be in a continuous process of completion and completed as soon as reasonably possible, consistent with generally accepted local engineering and architectural standards and practices, provided that the requirement that the project be in a continuous process of completion and completed as soon as reasonably possible shall not apply if the project is interrupted for any reason by circumstances beyond the direct control of the person to whom a permit subject to this section has been issued.

(b) This section does not apply to:

(1) permits or licenses issued in connection with any form of gaming or gambling;

(2) permits or licenses issued under Title 2, Tax Code; [or]

(3) permits or orders issued under programs for which a state regulatory agency has received authorization, delegation, or approval from the federal government to implement an equivalent state program in lieu of or as part of the federal program; or

(4) an order, regulation, ordinance, or other requirement of a municipality that is necessary to comply with state or federal laws or regulations.

SECTION 2.12. Subsection (d), Section 5.13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Sections 5.16, 5.17, 5.21, and 5.25 of this article apply to construction projects undertaken by <u>or for</u> the <u>institutional division of the</u> Texas Department of <u>Criminal Justice</u> [Corrections]. No other provisions of this article apply to construction projects undertaken by <u>or for</u> the <u>institutional division of the</u> Texas Department of <u>Criminal Justice</u> [Corrections].

SECTION 2.13. Subsection (c), Section 5.16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Section 4 of Chapter 362 and Section 4 of Chapter 571, Acts of the 68th Legislature, Regular

Session, 1983, is amended to read as follows:

(c) A project analysis shall consist of (1) a complete description of the facility or project together with a justification of such facility or project prepared by the using agency, (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic future growth, (3) a description

of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction, (4) an estimate of the probable cost of construction, (5) a description of the proposed site of the project and an estimate of the cost of site preparation, [and] (6) an overall estimate of the cost of the project, (7) the information about historic structures considered instead of new construction that was prepared as required by Section 5.01A of this article, and (8) other information as required by the commission. A project analysis may include two or more alternative proposals for meeting the space needs of the using agency by (1) new construction, (2) acquisition and rehabilitation of an existing or historic structure, or (3) a combination of the above. If any part of the project involves the construction or rehabilitation of a building that is to be used primarily as a parking garage or for office space for the state government, the project analysis also shall include a description of the amount and location of space in the building that can be made available for lease, under Section 4.15 of this Act, to private tenants or shall include a statement of the reason that the lease of space in the building to private tenants is not feasible. All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Throughout the preparation of the project analysis, the commission and any private architect/engineer employed by the commission shall work closely and cooperatively with the using agency to the end that the project analysis shall fully reflect the needs of the using agency.

The using agency shall use the cost of the project as determined by such project analysis as the basis of its request to the budget offices of this state.

SECTION 2.14. Subsection (b), Section 5.18, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If the expenditures for fine arts are authorized and appropriated by the legislature, the commission shall consult and cooperate with the Texas Commission on the Arts [and Humanities] for advice in determining how to utilize the portion of the appropriation to be used for fine arts projects.

SECTION 2.15. Subsections (b) and (c), Section 5.19, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

- (b) The agency or the governing body of a political subdivision may consult and cooperate with the Texas Commission on the Arts [and Humanities] for advice in determining how to utilize the portion of the cost set aside for fine arts purposes.
- (c) The Texas Commission on the Arts [and Humanities] shall place emphasis on works by living Texas artists whenever feasible, and when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.

SECTION 2.16. Subsection (c), Section 5.20, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Following final approval of the working plans and specifications and their acceptance by the using agency, the commission shall cause to be advertised in not less than two newspapers of general circulation for bids or proposals for performance of the construction and related work on the project. The commission shall allow bidders at least 30 days after the date that the commission issues the bid documents to respond to an invitation to bid, but the commission may shorten the period to prevent undue additional costs to a state agency or for emergency projects to prevent or remove a hazard to life or property. Subject to the applicable

provisions of other law respecting the award of state contracts, the contract or contracts shall be awarded to the qualified bidder making the lowest and best bid; but no contract shall be awarded for a sum in excess of the amount which the comptroller shall certify to be available for such project. The commission shall have the right to reject any and all bids.

SECTION 2.17. Section 5.22, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection

(b) and adding Subsection (c) to read as follows:

(b) Responsibility for the selection of a private architect/engineer employed for any project covered by the provisions of this article shall be vested in the commission. The commission shall adopt rules that state the criteria the commission uses to evaluate the competence and qualifications of private architects/engineers. The commission shall develop the rules in consultation with the Texas Board of Architectural Examiners and the State Board of Registration for Professional Engineers. The commission shall allow each private architect/engineer selected for an interview at least 30 days after the date the commission notifies the architect/engineer to prepare for the interview.

(c) In recognition of the close working relationship which must exist between the architect/engineer and the using agency, the commission shall request the using agency to make recommendations regarding private architects/engineers and shall consider any such recommendation in making its selection of a private architect/engineer to be employed for a particular project. The commission shall make its selection in accordance with the rules adopted under Subsection (b) of this section [generally accepted standards for such selection] and [in conformity with] the ethical standards of the professional societies of such architects/engineers.

SECTION 2.18. Subsection (b), Section 5.26, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission shall cause the uniform general conditions of state building construction contracts to be reviewed whenever in its opinion such review is desirable, but in no event less frequently than once every five years. The review shall be made by a committee appointed by the commission consisting of the director of facilities construction and space management, who shall serve ex officio as chairman of the committee and who shall vote only in the event of a tie; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; [and] two persons appointed by the commission from a list of nominees submitted to it by the Chairman of the Executive Council of the Texas Associated General Contractors Chapters; and two persons appointed by the commission from the list of nominees submitted to it by the Executive Secretary of the Mechanical Contractors Associations of Texas, Incorporated. Members of any review committee appointed pursuant to this subsection shall serve without compensation but may be reimbursed for their necessary and actual expenses

SECTION 2.19. Subsection (a), Section 5.35, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall prepare a long-range plan regarding the needs of state agencies in Travis County which obtain or occupy space under provisions of this [the State Purchasing and General Services] Act [(Article 601b, Vernon's Texas Civil Statutes)].

SECTION 2.191. Section 6.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.01. <u>DEFINITION</u> [DEFINITIONS]. In this article, "space" means office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, or any combination thereof, but does not include aircraft hangar space, radio antenna space, boat storage space, vehicle parking space, residential space for a Texas Department of Mental Health and Mental Retardation program, or space to be utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or other similar purposes.

SECTION 2.20. Subsection (b), Section 6.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Section 3 of Chapter 779 and Section 5 of Chapter 1244, Acts of the 71st Legislature,

Regular Session, 1989, is amended to read as follows:

(b) The space may be leased from another state agency through an interagency contract, or from the federal government[, a commercial building which is 100 percent owned, either directly or indirectly, by a statewide Texas public retirement system] or a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, [or from a statewide Texas public retirement system in a commercial building that is 100 percent directly or indirectly owned by the retirement system;] through a negotiated contract, from a statewide Texas public retirement system in a commercial building that is 100 percent directly or indirectly owned by the retirement system.

SECTION 2.21. Subsection (j), Section 6.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) In leasing space for the use of state agencies, the commission shall give first consideration to a building that is a historic structure under Section 442.001, Government Code [8, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes)], or to a building that has been designated a landmark by the local governing authority, if the building meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications. Upon consideration of the leasing of space for the use of a state agency, the commission shall notify all individuals and organizations that are within the county where the leasing is under consideration and that are on a list furnished to the commission by the Texas Historical Commission as required by Section 442.005, Government Code [8C of Chapter 500; Acts of the 55th Legislature, Regular Session, 1957 (Article 6145, Vernon's Texas Civil Statutes)]. At the end of a biennium, the commission shall report to the legislature the commission's reasons for rejecting during the biennium the lease of any historic structure whose owner bid to lease space to the state.

SECTION 2.22. Section 6.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.06. ELIMINATION OF BARRIERS TO HANDICAPPED PERSONS IN STATE BUILDINGS. The commission may not enter a lease contract under this article unless it complies with the provisions of Article 9101, Revised Statutes [7 of this Act].

SECTION 2.23. Section 6.111, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.111. DELEGATION OF AUTHORITY TO INSTITUTIONS OF HIGHER EDUCATION. The commission may delegate to an institution of higher education the authority to enter into space lease contracts financed from sources other than funds appropriated from general revenue, provided that an institution of higher education may not enter a lease contract under this section unless it

complies with the provisions of Article 9101, Revised Statutes [7 of this Act] concerning architectural barriers.

SECTION 2.231. Chapter 403, Government Code, is amended by adding

Subchapter K to read as follows:

SUBCHAPTER K. PROPERTY ACCOUNTING

Sec. 403.271. PROPERTY ACCOUNTING SYSTEM. (a) This subchapter

applies to all personal property belonging to the state.

(b) The comptroller shall administer the property accounting system and maintain centralized records based on information supplied by state agencies and the uniform statewide accounting system. The comptroller shall adopt necessary rules for the implementation of the property accounting system, including setting the dollar value amount for capital assets and authorizing exemptions from reporting.

(c) The property accounting system shall constitute, to the extent possible, the

fixed asset component of the uniform statewide accounting system.

(d) The comptroller may authorize a state agency to keep property accounting records at the agency's principal office if the agency maintains complete, accurate, and detailed records. When the comptroller makes such a finding, it shall keep summary records of the property held by that agency. The agency shall maintain detailed records in the manner prescribed by the comptroller and shall furnish reports at the time and in the form directed by the comptroller.

(e) A state agency shall mark and identify state property in its possession. The agency shall follow the rules issued by the comptroller in marking state property.

Sec. 403.272. RESPONSIBILITY FOR PROPERTY ACCOUNTING. (a) A state agency must comply with this subchapter and maintain the property records required.

(b) All personal property owned by the state shall be accounted for by the agency that possesses the property. The comptroller shall define personal property by rule for the purposes of this subchapter. In adopting rules, the comptroller shall consider the value of the property, its expected useful life, and the cost of recordkeeping. The comptroller shall consult with the state auditor in drafting rules. The state auditor shall cooperate with the comptroller by giving technical assistance and advice.

Sec. 403.273. PROPERTY MANAGER; PROPERTY INVENTORY. (a) The head of each state agency is responsible for the custody and care of state

property in the agency's possession.

(b) The head of each state agency shall designate a property manager and inform the comptroller of the designation. Subject to comptroller approval, more than one property manager may be appointed by the agency head.

(c) The property manager shall maintain the records required and be the

custodian of all property possessed by the agency.

(d) State property may be used only for state purposes.

(e) When an agency's property is entrusted to a person other than the property manager, the property manager shall require a written receipt from the person receiving custody of the property. When the property of one agency is lent to another agency, the lending must be authorized in writing by the head of the agency that is lending the property. A written receipt must be executed by the head of the agency that is receiving the property.

(f) On the date prescribed by the comptroller, a state agency shall make a complete physical inventory of all property in its possession. The inventory must

be completed once each year.

(g) Within 45 days after the inventory date prescribed by the comptroller, the head of each state agency shall forward to the comptroller a signed statement describing the method used to verify the inventory and a copy of the inventory.

(h) The property records prepared by each state agency must accurately reflect the property currently possessed by the agency. The agency must use the methods prescribed by the comptroller to delete property from the agency's property records. Property that has become surplus or obsolete and no longer serviceable may be deleted from the agency's records only upon authorization by the comptroller. Property that is missing or that is disposed of directly by the agency shall be deleted from the comptroller's records on approval by the state auditor.

Sec. 403.274. CHANGE OF AGENCY HEAD OR MANAGER. When the head or property manager of an agency changes, the new head or property manager of the agency shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of the receipt shall be delivered to the comptroller, the state auditor, and the

outgoing agency head or property manager.

Sec. 403.275. LIABILITY FOR PROPERTY LOSS. The liability prescribed by this section may attach on a joint and several basis to more than one person in a particular instance. A person is pecuniarily liable for the loss sustained by the state

(1) agency property disappears, as a result of the failure of the head of an agency, property manager, or agency employee entrusted with the property to exercise reasonable care for its safekeeping;

(2) agency property deteriorates as a result of the failure of the head of an agency, property manager, or agency employee entrusted with the property

to exercise reasonable care to maintain and service the property; or

(3) agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any state official or employee.

Sec. 403.276. REPORTING TO STATE AUDITOR AND ATTORNEY GENERAL. (a) If a head of an agency has reasonable cause to believe that any state property in the agency's possession has been lost, destroyed, or damaged through the negligence or fault of any state official or employee, the agency head responsible shall immediately report the loss, destruction, or damage to the state auditor and to the attorney general.

(b) The attorney general shall investigate a report of loss, destruction, or

damage to state property.

(c) If the investigation discloses that a property loss has been sustained by the state through the fault of a state official or employee, the attorney general shall make written demand on the state official or employee for reimbursement to the state for the loss sustained.

(d) If the demand made by the attorney general for reimbursement for property loss, destruction, or damage is refused or disregarded by the state official or employee on whom such demand is made, the attorney general may take legal action to recover the value of the state property as the attorney general deems necessary

(e) Venue for all suits instituted under this section against a state official or

employee is in a court of appropriate jurisdiction of Travis County.

Sec. 403.277. FAILURE TO KEEP RECORDS. If a state agency fails to keep the records or fails to take the annual physical inventory required by this subchapter, the comptroller may refuse to draw warrants or initiate electronic funds transfers on behalf of the agency

TRANSFER OF PERSONAL PROPERTY. (a) A state agency Sec. 403.278. may transfer any personal property of the state in its possession to another state

agency with or without reimbursement between the agencies.

(b) When personal property in the possession of one state agency is transferred to the possession of another state agency, the transfers must be reported immediately to the comptroller by the transferor and the transferee on the forms prescribed.

SECTION 2.24. Subsection (a), Section 8.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This article applies to personal property belonging to the state. [All personal property belonging to the state shall be accounted for by the head of the agency that

has possession of the property.]

SECTION 2.25. Subsection (b), Section 8.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Section 97 of Chapter 584 and Section 3 of Chapter 781, Acts of the 71st Legislature,

Regular Session, 1989, is amended to read as follows:

(b) The commission shall administer the property accounting system and maintain a complete and accurate set of centralized records of state property based on information supplied by state agencies or the uniform statewide accounting system. The property accounting system shall, to the extent possible, constitute the fixed asset component of the uniform statewide accounting system. The commission shall coordinate with the comptroller in issuing rules, instructions, and necessary requirements for the property accounting system. The rules, instructions, and requirements must be consistent with the requirements of the uniform statewide accounting system. [The commission shall issue rules and regulations and a manual of instruction and prescribe such records, reports, and forms necessary to accomplish the objects of this article subject to review and comment by the state auditor. The state auditor is directed to cooperate with the commission in the exercise of the commission's rulemaking powers herein granted by giving technical assistance and advice.]

SECTION 2.26. Subsection (b), Section 8.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as

follows:

(b) All personal property owned by the state shall be accounted for by the <u>head</u> of the agency that <u>has possession of [possesses]</u> the property. The commission shall by <u>rule [regulation]</u> define what is meant by personal property for the purposes of this article, but such definition shall not include nonconsumable personal property having a value of \$500 or less per unit. In promulgating such <u>rules [regulations]</u>, the commission shall take into account the value of the property, its expected useful life, and if the cost of record keeping bears a reasonable relationship to the cost of the property on which records are kept. The commission shall consult with the state auditor in making such <u>rules [regulations]</u> and the auditor shall cooperate with the commission in the exercise of this rulemaking power by giving technical assistance

SECTION 2.27. Section 9.11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.11. PURCHASE OF LEGISLATIVE CHAIRS. Notwithstanding any provision of law to the contrary, upon the vacation of an office or the termination of employment, an elected officer, an appointed officer, or an executive head of a state agency within the legislative, executive, and judicial departments of state government may purchase the chair used by the officer or employee during his or her tenure of service for its fair market value. A determination of the fair market value of the chair shall be made by the commission for executive and legislative agencies other than the legislature, by the chief justice for judicial agencies, by the speaker of the house of representatives for the house of representatives, and by the lieutenant governor for the senate [A legislator may purchase the executive chair used by the legislator on the floor of the legislature if:

[(1) the legislator has not been reelected; and

[(2) the legislator pays into the state treasury the commission's estimate of the fair market value of replacement equipment.

[This section does not limit a legislator's right to purchase state-owned equipment in any other manner].

SECTION 2.28. Subsection (b), Section 11.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Any reference in the statutes to the State Board of Control or [means] the State Purchasing and General Services Commission means the General Services Commission.

SECTION 2.29. Section 11.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Chapters 778 and 791, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

- Sec. 11.02. DELIVERY OF CERTAIN INTERAGENCY MAIL. (a) The commission shall operate a messenger service for handling the delivery of unstamped written communications and packages between state agencies, including the legislature and legislative agencies, located in Travis County. All such agencies shall utilize the service.
- (b) Unless use of the United States Postal Service is required by state or federal law, a state agency subject to Subsection (a) of this section may not use the United States Postal Service for delivery of interagency mail to another state agency in Travis County, provided, however, state agencies subject to Subsection (a) are not prohibited from using an alternate delivery method.
- (c) State warrants may be delivered upon agreement between the state comptroller, the commission, and the agency concerned.
- (d) United States mail may be delivered to and from the post office located in the capitol complex on agreement of the commission and the agency concerned. [(d)] It is the intent of the legislature that mail be processed for delivery as expeditiously as its priority dictates and that mail not be unduly delayed solely for the purpose of achieving a lower rate of postage.
- (e) In order to improve state agency management of mail operations and to reduce the state's mail costs, this Act requires that state agencies of the executive branch of state government established by the constitution or statutes of this state:
- (1) evaluate their mail operations to identify and eliminate practices resulting in excessive mailing costs; and
- (2) develop and implement plans and programs for making the necessary improvements in such operations.
- (f) Not later than January 1, 1990, the commission [State Purchasing and General Services Commission] shall:
- (1) evaluate the mail operations of agencies located in Travis County to make recommendations to identify and eliminate practices resulting in excessive mailing costs; and
- (2) establish minimum mail-management objectives and responsibilities to be carried out by offices and units of these agencies.
- (g) Not later than April 1, 1990, the <u>commission</u> [State Purchasing and General Services Commission] shall develop and submit to the governor and the legislative budget office a mail-management plan which provides for:
- (1) improving the measurement of agency mail costs, in conjunction with the United States Postal Service, including considering the use of postage meters or stamps;
- (2) determining the advantages to agencies of using mail presorting programs;
- (3) determining the lowest cost class of mail necessary to effectively accomplish individual agency functions;
- (4) evaluating the cost-effectiveness of using alternatives to the United States Postal Service for the delivery of agency mail; and

(5) training agency personnel regarding cost-effective mailing practices.

(h) The commission [State Purchasing and General Services Commission]

shall:

- (1) establish programs to implement the plan prepared under Subsection (g) of this section, including standards for receipt, delivery, collection, and dispatch of mail; and
- (2) publish and disseminate mail-management standards, guides, and instructions and establish and implement procedures for monitoring compliance with such standards, guides, and instructions.

(i) State agencies in Travis County shall:

(1) periodically submit to the governor and the legislative budget office reports of their progress in achieving the objectives and other revisions of the plan required by Subsection (g) of this section, including an analysis of savings projected from the improvements in mail management provided for in such revised plan;

(2) designate a person to be responsible for the development and implementation of mail-management programs for all offices and units of the

agency; and

(3) review and consolidate mailing lists used by the agency to

distribute publications and other materials issued by the agency.

(j) When two or more state agencies are providing common services for mail management, those agencies may designate a single agency to report on behalf of all agencies participating under the contract.

SECTION 2.291. Subsection (b), Section 13.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as

follows:

(b) This article is adopted to:

(1) promote more efficient use of public funds; [and]

(2) ensure periodic review of state agency management and support activities in order to improve agency operations, better determine costs, increase agency productivity, and remain competitive with the private sector; and

(3) ensure that government agencies do not needlessly and unfairly

compete with private enterprise.

- SECTION 2.292. Section 13.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivision (6) to read as follows:
- (6) "Private enterprise" means a person or corporation that manufactures, processes, sells, leases, distributes, provides, or advertises goods or services for profit, or a duly chartered nonprofit corporation engaged in such activities.

SECTION 2.30. Subsections (a) through (d), Section 13.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are

amended to read as follows:

- (a) Each biennium a state agency subject to this article shall conduct competitive cost reviews of the functions performed by that agency as provided by this article and shall adopt rules to implement this article. If the agency has an internal auditor, the internal auditor shall coordinate the activities of the agency that are required under this article. The agency shall conduct management studies, develop agency in-house cost estimates, and conduct other activities as necessary to implement this article.
- (b) In conducting a competitive cost review of the functions performed by a state agency, the agency shall analyze all agency activities, shall identify by November 1 of each year all commercial activities performed by the agency, and

shall develop a schedule for the analysis of the commercial activities identified. For each commercial activity identified, the agency shall also at that time quantify in measurable units the amount of the activity performed by the agency and identify the amount of money budgeted for the activity by the agency. The administrative head of the agency shall promptly submit the agency's inventory of commercial activities, including the workload and budget information, together with its analysis schedule to the State Auditor, Legislative Budget Board, Governor's Office of Budget and Planning, Senate Finance Committee, House Appropriations Committee, and commission for review and comment. The agency shall then report its determinations to its governing body and shall submit the schedule to its governing body [for approval] by December 1 of each year for approval.

(c) After approval of the schedule by the governing body, the state agency shall conduct a management study of the agency functions specified in the schedule. The agency shall conduct the study in accordance with instructions issued by the

commission. At the minimum, a management study must contain:

(1) a description of the agency function;

(2) an analysis of the quality and quantity of the work of the agency in relation to that function; and

(3) a description of any efficiency initiatives that the agency could

implement to perform the function more efficiently.

(d) The <u>agency shall submit the completed management study to the commission for approval.</u> After the commission has approved the study, the agency shall estimate the total cost to perform the function and submit each agency in-house cost estimate to the State Auditor for approval. If the agency has an internal auditor, the agency shall submit its cost estimate to its internal auditor for review before forwarding the cost estimate to the State Auditor.

SECTION 2.301. Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 13.031

to read as follows:

Sec. 13.031. SUBMISSION OF COMPLAINT BY PRIVATE ENTERPRISE. (a) The commission shall develop and publish the procedure by which private enterprise may submit a written complaint to the commission that an activity of a state agency is in direct competition with the private enterprise.

(b) Upon receiving such a complaint, the commission shall:

(1) transmit the complaint to the state agency alleged to be in competition with the private enterprise, with a request for a response by the agency;

(2) at the first meeting of the commission after the expiration of 60 days from date of complaint, consider such complaint and determine whether the state agency is in direct competition with the private enterprise;

(3) not later than the 30th day after the date the commission considers such complaint, issue a written report of the commission's findings, conclusions, and recommendations on the complaint; and

(4) transmit a quarterly report to the legislature and the governor, including the findings, conclusions, and recommendations of the commission on complaints reviewed by the commission during the previous quarters.

(c) In reviewing a complaint received under this article, the commission shall

consider:

(1) whether the state agency, by virtue of its resources and market position, is unfairly competing with private enterprise;

(2) whether the state agency's cessation of the activity would:

(A) create an emergency;

(B) cause substantial harm to the state or loss of invested

funds; or

(C) cause substantial harm to the legitimate educational

needs of the state;

(3) any overriding or compelling state interest; and (4) whether the activity is specifically authorized by law.

(d) A state agency that is the subject of a complaint received by the committee under this article shall file a written response with the commission not later than the 30th day after the date the agency receives a complaint transmitted under Subsection (b)(1) of this section. The response must either deny or concur with the complaint and indicate necessary and contemplated remedial measures, if any.

(e) The provisions of this section shall apply to all state agencies SECTION 2.302. Section 13.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (d)

to read as follows:

(d) The State Auditor shall assist the commission in reviewing any complaint from private enterprise regarding unfair competition from a state agency.

SECTION 2.31. Section 13.05, State Purchasing and General Services Act

(Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows: Sec. 13.05. DUTIES OF [STATE PURCHASING AND] GENERAL SERVICES COMMISSION. (a) The commission by rule shall issue instructions

that govern the conduct of state agency management studies under Section 13.03 of this article.

(b) The commission shall conduct a cost comparison review. In conducting

the cost comparison review, the commission shall:

(1) estimate the cost to purchase the service from the private sector. In developing the estimate, the commission may use specific area surveys, state average costs or current bid data;

(2) determine if the quality and quantity of service that could be provided through purchase is at least equal to the quality and quantity of service proposed in the agency management study and in-house cost estimate;

(3) determine the total state cost incurred in providing the service

based on the approved agency in-house cost estimate; and

(4) based on estimates of the total cost, compare the total cost to the state to purchase the services with the total state cost of providing the service.

(c) [(b)] After consultation with the agency and State Auditor, the commission shall determine if the total state cost of providing the service exceeds the cost of purchasing the service. If the commission finds that at least the same quality and quantity of service can be purchased at a savings of more than 10 percent, the commission shall notify the chairman of the governing body of the agency of the amount by which the agency's costs exceed the costs of purchasing the service. The commission may request any information from a state agency necessary to accomplish the purpose of this subsection.

(d) The commission shall establish internal controls, when the commission conducts competitive cost reviews of its own commercial activity functions, to separate internally the duties performed by the commission as a state agency subject to this article and the duties performed by the commission for all state agencies

subject to this article.

SECTION 2.32. Section 13.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.07. SAVINGS FROM EFFICIENCY INITIATIVE. Except for savings allocated to the productivity bonus program [(Article 6252-29, Vernon's Texas Civil Statutes),] and the state employee incentive program (Article 6252-29a [6252-28], Vernon's Texas Civil Statutes), all savings that result from reduced costs under the efficiency initiative shall be used by the agency for treatment, rehabilitation, or other direct services the agency provides to persons it serves or, when savings result to the commission, for direct services the commission provides to state government.

SECTION 2.33. Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Chapters 230, 813, and 1084, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 13.09. APPLICATION. The state agencies subject to this article are:

(1) the Texas Department of Mental Health and Mental Retardation;

(2) the Texas Department of Human Services;

(3) the Texas Department of <u>Criminal Justice (institutional division)</u> [Corrections]; [and]

(4) the Department of Agriculture;[:]

(5) [(4)] the Central Education Agency;[:]

(6) [(4)] the Texas Higher Education Coordinating Board; and

(7) the commission.

SECTION 2.34. Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 13.10 to read as follows:

Sec. 13.10. SUNSET REVIEW OF PROGRAM. (a) The competitive cost review program is subject to Chapter 325, Government Code (Texas Sunset Act), as if the program were a state agency subject to review under that chapter. Unless continued in existence as provided by that chapter, the program is abolished and this article of this Act expires September 1, 1995.

(b) To the extent Chapter 325, Government Code (Texas Sunset Act), imposes a duty on a state agency under review, the commission shall perform the duty as

it applies to the competitive cost review program.

SECTION 2.35. Section 14.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14.01. DIVISION. The travel division of the commission is composed of the central travel office and the office of vehicle fleet maintenance. The commission shall adopt rules to implement this article, including rules related to:

(1) the structure of travel agency contracts that the commission

makes;

(2) the procedures the commission uses in requesting and evaluating bids or proposals for travel agency contracts from providers; and

(3) the use of negotiated contract rates for travel services by state

agencies.

SECTION 2.36. Section 14.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection

(b) and adding Subsection (c) to read as follows:

- (b) The central travel office shall initially provide services to designated agencies located in Travis County and shall extend its services to all state agencies as it develops the capability to do so. The office may negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state. The commission shall make contracts with more than one provider of travel agency services. Contracts entered into under this section are not subject to the competitive bidding requirements imposed under Article 3 of this Act. The comptroller of public accounts shall audit for compliance of rules adopted to enforce the provisions of this section.
- (c) State agencies in the executive branch of state government shall participate in accordance with commission rules in the commission's contracts for travel services, provided that institutions of higher education as defined by Section 61.003, Education Code, shall not be required to participate in the commission's contracts for travel agency services. The commission may provide by rule for exemptions from required participation. Agencies of the state that are not required to participate

in commission contracts for travel services may participate as provided by Subsection (a) of this section.

SECTION 2.37. Section 14.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14.04. FEES. Fees collected by the travel division under this article shall be deposited in the State Treasury to the credit of the General Revenue Fund unless a different disposition of the funds is required under federal law.

PART 3. SCHOOL BUSES

SECTION 3.01. Section 21.165, Education Code, is amended to read as follows:

Sec. 21.165. PURCHASE THROUGH GENERAL SERVICES COMMISSION [BOARD OF CONTROL]. (a) The purchase of motor vehicles (including buses, bus chassis, bus bodies, tires, and tubes) by the General Services Commission [Board of Control] shall be made in compliance with the provisions of this section.

(b) Whenever possible, the [The] purchase must be made on the basis of competitive bids submitted under [such] rules [and regulations as may be] made by

the General Services Commission [Board of Control].

(c) The purchase must be authorized by a requisition, which may be submitted by either a board of county school trustees or the board of trustees of a school district. The requisition must include a general description of the article or articles desired, as well as any other applicable matter specified in this section.

(d) If the requisition is for the purchase of a motor vehicle, bus, bus body, or bus chassis, it must be approved by either the county school board when funded under law or the board of trustees of a school district and by the commissioner of

education.

(e) If the requisition is for the purchase of tires and tubes, it must be approved by the county superintendent or the chief administrative officer of a school district.

(f) If the requisition is for the purchase of special equipment required, because of climatic or road conditions, to guarantee adequate safety and comfort of school children, the requisition must describe the special conditions and requirements so that the General Services Commission [Board of Control] may purchase equipment which it determines to be adapted or designed for the conditions or requirements.

(g) The board of county school trustees or board of trustees of a school district shall [requisition must contain a certification as to the funds that will be available to] pay for the article or articles requisitioned as directed by the General Services

Commission.

SECTION 3.011. Section 21.174, Education Code, is amended by adding

Subsections (h) and (i) to read as follows:

(h) In this section, a vehicle is considered to be capable of using compressed natural gas or other alternative fuels if the vehicle is capable of using compressed natural gas or other alternative fuels either in its original equipment engine or in an engine that has been converted to use compressed natural gas or other alternative fuels after September 1, 1991, unless the time for compliance is extended pursuant to Subsection (i) of this section.

(i) The General Services Commission may extend the date by which a vehicle powered by a traditional gasoline or diesel engine shall be capable of using compressed natural gas or other alternative fuels as required under this section for one or more periods of 90 days, but not beyond September 1, 1992, if it finds a lack of ability to acquire such vehicles with original alternative fuels equipment or to convert such vehicles to use compressed natural gas or other alternative fuels.

SECTION 3.02. Section 21.180, Education Code, is amended to read as follows:

- Sec. 21.180. PURCHASE OF VEHICLES. [(a) Motor vehicles used for the purpose of transporting school children, including school buses, their chassis and/or bodies purchased through the state board of control, shall be paid for by the state board of control as set out in applicable laws. The legislature may appropriate out of any money in the state treasury not otherwise appropriated a sum not exceeding \$250,000, or as much thereof as necessary, for the state board of control to be used for such purposes:
- [(b) Any sum appropriated shall be known as the school bus revolving fund. When motor vehicles and school buses are delivered to the various schools coming within the provisions of this subchapter, the governing bodies of those schools shall reimburse the state board of control for the money expended for such school buses including their chassis and/or bodies and the money shall be deposited by the state board of control in the school bus revolving fund.
- [(c)] All purchases of motor vehicles must comply with the alternative fuels use requirements of Section 21.174.

SECTION 3.03. Subsections (a), (d), and (h), Section 21.182, Education Code, are amended to read as follows:

- (a) As an alternative to purchasing school buses, a county or local district school board may contract with any person for use, acquisition, or lease with option or options to purchase any school bus or buses if, at the discretion of the school board, such a contract is determined to be economically advantageous to the school district and complies with the alternative fuels requirements of Section 21.174. Contracts may be in the form of a lease or a lease with option or options to purchase. A contract is in the form of a lease if it is a contract for the use and possession of one or more school buses for consideration. Ownership of a bus acquired through a lease or a lease with an option to purchase remains with the lessor unless the lessee exercises an option to purchase and purchases the bus under the option. A school bus that is leased or leased with an option to purchase under this section must meet or exceed the requirements related to safety that apply to purchased or privately operated school buses under Section 11.12. Contracts in the form of an installment purchase or any form other than a lease or a lease with option or options to purchase shall be subject to the provisions of Section 21.165, as well as rules [and regulations] of the [State Purchasing and] General Services Commission.
- (d) The competitive bidding requirements of Section 21.901 apply to each contract in the form of a lease or lease with an option to purchase under this section [Each county or district school board shall comply with the terms of the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) in entering into contracts, including the requirement that certain contracts be awarded pursuant to public bids, except that it is not necessary for a school district to submit the question of entering into a contract to a referendum].
- (h) A contract <u>under this section</u> may have any lawful term of not less than two or more than[, not to exceed] 10 years. A county or local district school board that contracts under this section shall report the existence of the contract and the number of buses under the contract to the General Services Commission within 45 days after the date the contract was made. A county or local district school board that terminates a contract under this section before the two-year minimum term has expired shall report the termination and the reason for the termination to the General Services Commission within 45 days after the date the contract was terminated.
- SECTION 3.04. Section 21.901, Education Code, is amended by adding Subsection (h) to read as follows:
- (h) Whenever possible, each contract proposed to be made by any Texas public school board for the lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$10,000 or more.

PART 4. ARCHITECTURAL BARRIERS

SECTION 4.01. Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is transferred to Title 132A, Revised Statutes, redesignated as Article 9101, Revised Statutes, and amended to read as follows:

Art. 9101 [ARTICLE 7]. ARCHITECTURAL BARRIERS
Sec. 1 [7.01]. POLICY. The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of persons with disabilities [handicapped or disabled citizens] and to eliminate, insofar as possible, unnecessary barriers encountered by [aged, handicapped, or disabled] persons with disabilities, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings

Sec. 2 [7.02]. APPLICATION. (a) The standards and specifications adopted under this article shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective date of this article from any one of these funds or any combination thereof shall conform to each of the standards and specifications adopted under this article except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department [commission]. If it is determined that full compliance is not practicable, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this article, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This article shall apply to temporary or emergency construction as well as permanent buildings.

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by the state through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department [commission]. If it is determined that full compliance is not practical, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

- (d) Except as otherwise provided in Subsection (e) of this section, these standards and specifications shall be adhered to in certain privately financed buildings, building elements, and improved areas which are open to public use for education, employment, transportation, or acquisition of goods and services, and which are constructed on or after January 1, 1978, in counties with a population of 45,000 or more or on or after January 1, 1992, in all other counties. Such facilities include the following:
- (1) an inn, hotel, motel, or other place of lodging, except an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of the proprietor;
 - (2) a restaurant, bar, or other establishment serving food or drink;
- (3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (4) an auditorium, convention center, lecture hall, or other place of public gathering;
- (5) a bakery, grocery, store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (7) a terminal, depot, or other station used for specified public transportation;
- (8) a museum, library, gallery, or other place of public display or collection;
 - (9) a park, zoo, amusement park, or other place of recreation;
- (10) a nursery, elementary, secondary, undergraduate, or postgraduate private school or other place of education;
- (11) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social services center establishment; and
- (12) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation [shopping centers which contain in excess of five separate mercantile establishments; compliance with accessibility standards and specifications relative to toilet rooms shall not apply unless the shopping center elects to have public toilet rooms;
 - [(2) passenger transportation terminals;
- [(3) theaters and auditoriums having a seating capacity for 200 or more patrons;
- [(4) hospitals and related medical facilities which provide direct medical service to patients;
 - [(5) nursing homes and convalescent centers;
- [(6) buildings containing an aggregate total of 20,000 or more square feet of recognizable office floor space;
 - [(7) funeral homes; and
 - [(8) commercial business and trade schools].
- (e) The <u>commissioner</u> [commission] shall have the authority to waive or modify accessibility standards and specifications when application of such standards and specifications is considered by the <u>commissioner</u> [commission] to be irrelevant

to the nature, use, or function of a building or facility covered by this article. The commissioner [commissioner [commission] shall not waive or modify any standard or specification when such action would result in a significant impairment of the acquisition of goods and services by [handicapped] persons with disabilities or substantially reduce the potential for employment of [handicapped] persons with disabilities. All evidence supporting waiver or modification determinations made by the commissioner [commissioner [commission] shall be made a matter of record and become part of the file system maintained by the department [commission].

(f) All buildings and facilities covered by this article shall provide restroom facilities in conformance with the minimum plumbing facilities standards set forth

in Appendix C of the Uniform Plumbing Code.

Sec. 3 [7.03]. SCOPE. (a) This article is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities,

disabilities of coordination, and aging.

(b) It is intended to make all buildings and facilities covered by this article accessible to, and functional for, <u>persons with disabilities</u> [the physically handicapped] to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

Sec. 4 [7.04]. DEFINITIONS. For the purpose of this article the following

terms have the meanings as herein set forth:

- (1) "Nonambulatory disabilities" means impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.
- (2) "Semiambulatory disabilities" means impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semiambulatory. The listing here made is illustrative and shall not be construed as being exhaustive.
- (3) "Sight disabilities" means total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger
- (4) "Hearing disabilities" means deafness or hearing handicaps that might make an individual insecure in a public area because he is unable to communicate or hear warning signals.
 - (5) "Disabilities of coordination" means faulty coordination or palsy

from brain, spinal, or peripheral nerve injury.

- (6) "Aging" means those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories.
 - (7) "Commission" means the Texas Commission of Licensing and

Regulation.

(8) "Commissioner" means the commissioner of licensing and

regulation.

(9) "Department" means the Texas Department of Licensing and

Regulation.

(10) "Architect" means a person registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(11) "Engineer" means a person registered as an engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

Sec. 5 [7.05]. RESPONSIBILITIES FOR ENFORCEMENT. (a) In the [The responsibility for] administration and enforcement of this article [shall reside primarily in the commission], [but] the commissioner [commission] shall have the assistance of appropriate state rehabilitation agencies in carrying out commissioner

[its] responsibilities [under this article]. State agencies involved in extending direct services to [disabled or handicapped] persons with disabilities are authorized to enter into interagency contracts with the department [commission] to provide such additional funding as might be required to insure that service objectives and responsibilities of such agencies are achieved through the administration of this article. In enforcing this article the commissioner [commission] shall also receive the assistance of all appropriate elective or appointive state officials. The commissioner may contract with other state agencies, political subdivisions, nonprofit organizations, and private independent contractors to perform the commissioner's review and inspection functions for privately financed buildings that are not leased by the state or a political subdivision and may terminate those contracts for cause. The department [commission] shall from time to time inform professional organizations and others, including persons with disabilities, architects, engineers, and other building professionals, of this law and its application. Information disseminated by the department about the program shall include the types of buildings and leases covered by this article, the procedures for submitting plans and specifications for review, complaint procedures, and the address and phone number of the department's program. The department may enter into cooperative agreements to integrate information about the program with information produced or distributed by other public entities or by private entities.

- (b) The commissioner [commission] shall have all necessary powers to require compliance with the commissioner's [its] rules and regulations and modifications thereof and substitutions therefor, including powers to institute and prosecute proceedings under Section 18, Article 9100, Revised Statutes (in the district court to compel such compliance, and shall not be required to pay any entry or filing fee in connection with the institution of such proceedings. The commission may also impose an administrative penalty under Section 17, Article 9100, Revised Statutes, on a building owner for a violation of this article or a rule adopted under this article. Each day that the violation is not corrected constitutes a separate violation. The commissioner [commission] or a [handicapped] person with disabilities who seeks injunctive relief to obtain compliance with the rules and regulations, and the commissioner when the commission considers imposing an administrative penalty under this section, shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The commissioner [commission] shall have the authority to extend the 90-day period when circumstances justify such extension.
- (c) [The commission is authorized to promulgate such rules and regulations as might reasonably be required to implement and enforce this article:] The standards and specifications to be adopted by the <u>commissioner</u> [commission] under this article shall be consistent in effect to those adopted by the American National Standards Institute, Inc. (or its federally recognized successor in function), and the <u>department</u> [commission] shall publish the standards and specifications in a readily accessible form for the use of interested parties.
- (d) All plans and specifications for construction or for the substantial renovation, modification, or alteration of buildings subject to the provisions of this article shall be submitted to the department [commission] for review and approval prior to the time that construction or that substantial renovation, modification, or alteration on the building begins [bidding and award of contract] in accordance with rules and regulations adopted by the commissioner [commission]. The plans and specifications shall be submitted to the department by the architect or engineer who has overall responsibility for the design of the constructed or reconstructed building. The building owner shall submit the plans and specifications to the department if there is no architect or engineer with that responsibility. Likewise, any substantial modification of approved plans shall be resubmitted to the department

[commission] for review and approval. If an architect or engineer required to submit or resubmit plans and specifications to the department fails to do so in a timely manner, the commissioner shall report the fact to the Texas Board of Architectural Examiners or the State Board of Registration for Professional Engineers, as

appropriate.

- (e) The commissioner [commission] may review plans and specifications, make inspections, and issue certifications that structures not otherwise covered by this article are free of architectural barriers and in compliance with the provisions of this article. The department shall inspect each building subject to this article within the first year after the date that construction or substantial renovation, modification, or alteration of the building is completed. The department shall inspect each building that is subject to this article because of a lease to the state during the first year of the lease [commission is authorized to charge a fee, not to exceed \$100, for review of plans and specifications, inspection, and certification of each privately owned building or facility.
- [(f) With respect to buildings and facilities that are under the jurisdiction and control of The University of Texas Board of Regents, the responsibility for administration and enforcement of this article shall reside in such governing board, and in the discharge of such responsibility the governing board shall have the same responsibilities, duties, powers, and authority that are herein imposed on and delegated to the commission with respect to all other buildings and facilities covered by this article].
- Sec. 6. The commission shall set and charge, in accordance with Section 12, Article 9100, Revised Statutes, fees for performing its functions under this article. The fees shall be paid by the owner of a building when the department performs a function related to the building under this article. The fees must include a fee for:
 - (1) reviewing the plans or specifications of a building;

(2) inspecting a building; and

(3) processing a request to waive or modify accessibility standards for

a building.

- Sec. 7. (a) The commission shall appoint an advisory committee for the architectural barriers program. The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall be composed of at least eight members. Persons with disabilities must make up a majority of the membership.
- (b) A committee member serves at the will of the commission. A member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.
- (c) The committee shall elect a member of the committee as chair. The committee shall meet at least twice each calendar year at the call of the committee chair or at the call of the commissioner.
- (d) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission and the commissioner. The commissioner shall submit all proposed changes to rules and procedures that relate to the architectural barriers program to the committee for review and comment before adoption or implementation of the new or amended rule or procedure.
- Sec. 8. All references in law to the former architectural barriers statute, Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), mean this article.
- SECTION 4.02. Section 11, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. REVOCATION OR CANCELLATION OF CERTIFICATE. Registration certificates of architects issued in accordance with this Act shall remain in full force and effect until expiration date unless revoked or suspended for cause as herein provided. The registration certificate and right of any person to practice architecture in this State may be revoked or cancelled or a fine not to exceed One Thousand Dollars (\$1,000.00) may be levied against that person, or any combination thereof, by the Texas Board of Architectural Examiners after due notice and hearing and upon the proof of the violation of the law in any respect in regard thereto, or for any cause for which the Texas Board of Architectural Examiners is authorized to refuse to grant registration certificates, or for proof of gross incompetency, or for recklessness in the construction of buildings on the part of the architect designing, planning, or observing or supervising the construction or alteration of same, or for dishonest practice on the part of the holder of such registration certificate, or for failing to timely provide plans and specifications to the Texas Department of Licensing and Regulation as required by Article 9101, Revised Statutes. The action of the Board in revoking or cancelling such registration certificate, refusing to grant a certificate, or assessing a fine may be appealed in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4.03. Subsection (a), Section 22, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

- (a) The Board shall revoke, suspend, or refuse to renew a registration, shall reprimand a registrant, may deny an application for registration, or may probate any suspension of any registrant who is determined by the Board to be censurable for:
- (1) The practice of any fraud or deceit in obtaining a certificate of registration;
- (2) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer;
- (3) Any documented instance of retaliation by an applicant against an individual who has served as a reference for that applicant; [or]
 - (4) A violation of this Act or a Board rule; or
- (5) A failure to timely provide plans and specifications to the Texas Department of Licensing and Regulation as required by Article 9101, Revised Statutes.

PART 5. OTHER MATTERS RELATING TO STATE ACQUISITION OF PROPERTY AND SERVICES

SECTION 5.01. Section 497.027(a), Government Code, is amended to read as follows:

(a) An agency of the state that purchases articles and products under this subchapter must requisition the purchase through the [State Purchasing and] General Services Commission except for purchases of items or services not included in an established contract. The purchase of items not included in an established contract and that do not exceed the dollar limits established under Section 3.08(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), may be acquired directly from the department on the agency's obtaining an informal or a formal quotation for the item and issuing a proper purchase order to the department.

SECTION 5.02. Section 9, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. ISSUANCE OF BONDS. (a) The board may issue and sell bonds in the name of the authority to finance projects that consist of the acquisition or construction of buildings in Travis County, Texas. Upon receiving a request described in Section 5.34, State Purchasing and General Services Act (Article 601b,

Vernon's Texas Civil Statutes), the board may issue bonds in amounts up to the previously authorized amount of bonds plus five percent of the acquisition cost of the property, all as described in the request.

- (b) When the acquisition or construction of a building has been authorized in accordance with this Act or under Section 5.34, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), the board shall promptly issue and sell bonds in the name of the authority under this Act, including Sections 10B and 16 of this Act, to finance the acquisition or construction of the building. When the proceeds from the bond issuance are available, the board shall promptly deposit the proceeds in the state treasury under Section 23 of this Act and shall promptly make the determinations that are to be made by the board under Section 23 of this Act.
- (c) The commission or other state agency involved in acquiring or constructing a building financed by the issuance of bonds under this Act shall carry out its statutory authority as if the building were financed by legislative appropriation. The board and either the commission or another state agency involved in the acquisition or construction of a building shall adopt a memorandum of understanding that defines the division of authority between the board and the commission or agency.

SECTION 5.03. Section 27, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), as amended by Chapters 786 and 1042, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 27. PURCHASE AND RENOVATION OF TEXAS EMPLOYMENT COMMISSION PROPERTY. (a) The Texas Employment Commission shall sell to the commission office buildings and parking facilities in its possession in or near the Capitol Complex, and the commission shall purchase the buildings and parking facilities, at a sales price that shall not exceed the maximum amount of funds authorized for the acquisition and renovation in Chapter 700, Acts of the 68th Legislature, Regular Session, 1983. [The sale shall be under an agreement between the Texas Employment Commission and the commission on a price sufficient to provide the Texas Employment Commission adequate, alternative office and parking space outside the Capitol Complex and with the necessary concurrence of the United States government:]

(b) [The commission shall, under an agreement with the Texas Employment Commission and subject to the availability of funds authorized by this Act, purchase the office buildings and parking facilities of the Texas Employment Commission located in or near the Capitol Complex.] After the office buildings have been acquired, the commission may, from funds made available by the authority, renovate the facilities as necessary for occupancy by other state agencies. In negotiating the price for the Texas Employment Commission facilities, the commission shall consider the cost to the Texas Employment Commission of alternative space outside the Capitol Complex. The commission shall also consider the price in the context of the reasonable rates that might otherwise be paid by prospective occupying state agencies for rent in comparable space.

[Sec. 27. (a) The State Purchasing and General Services Commission may take possession of the office buildings and parking facilities in or near the Capitol Complex occupied by the Texas Employment Commission. To take possession the State Purchasing and General Services Commission must provide the Texas Employment Commission adequate, alternative office and parking space in the city of Austin and obtain the necessary concurrence that may be required by the United States government. On receiving that concurrence, title to the property is in the State Purchasing and General Services Commission, and the employment commission and purchasing commission shall execute the documents necessary to show title in the purchasing commission.

[(b) If the State Purchasing and General Services Commission takes possession of the office buildings and parking facilities of the Texas Employment Commission located in or near the Capitol Complex, the State Purchasing and General Services Commission may, from funds made available by the authority or from other available funds, renovate the facilities as necessary for occupancy by other state agencies or by the legislature of legislative agencies. Before renovating the facilities or making the facilities available for occupancy to a state agency, the purchasing commission shall offer the space to the legislature for its use and occupancy. For that purpose, the purchasing commission shall notify the lieutenant governor and the speaker of the house in writing, who may claim the property for the use and occupancy of the legislature and legislative agencies by delivering a written notice signed by both officers to the executive director of the commission. The notice must be delivered to the executive director of the commission. The notice must be delivered to the executive director before the 120th day after the date on which those officers receive notice of the availability of the property.

[(c) If at any time the lieutenant governor and the speaker deliver a written notice, signed by each, to the executive director of the purchasing commission stating that the employment commission facilities in or near the Capitol Complex are necessary for legislative use and occupancy, the property shall be made available for that use and occupancy as soon as possible but not later than the second anniversary of the date on which the executive director of the purchasing commission receives the notice from the lieutenant governor and the speaker. If the employment commission is at that time in possession of the property.

[(1) the purchasing commission shall take possession of the property and the employment commission shall vacate the property;

[(2) from funds made available by the authority or from funds appropriated for that purpose, the purchasing commission shall purchase or construct adequate, alternative office and parking space in the city of Austin for the employment commission and shall obtain the necessary concurrence that may be required by the United States government; and

[(3) on receiving that concurrence, title to the property is in the purchasing commission and the purchasing commission and employment commission shall execute the documents necessary to show title in the purchasing commission.

[(d) Subject to the availability of funds, the purchasing commission may renovate facilities purchased for the employment commission as necessary for occupancy by the employment commission. Any available funds remaining after purchase and renovation of the facilities for the employment commission may be used by the purchasing commission to renovate the facilities of the employment commission transferred under this section as necessary for occupancy by state agencies or the legislature and legislative agencies.]

SECTION 5.04. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.926 to read as follows:

Sec. 51,926. WRITTEN CONTRACTS OR AGREEMENTS BETWEEN CERTAIN INSTITUTIONS. (a) In this section, "governing board" and "institution of higher education" have the meanings assigned by Section 61.003 of this code.

(b) A written contract or agreement for the furnishing of resources or services that is between institutions of higher education with a common governing board is not subject to the requirements of Chapter 771, Government Code, if the governing board has adopted rules providing for governing board review and approval of those contracts.

PART 6. REPEALER

SECTION 6.01. (a) Section 3.27, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed.

- (b) Subsection (b), Section 6.051, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by Section 4, Chapter 779, Acts of the 71st Legislature, Regular Session, 1989, is repealed.
- (c) Article 99, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed.

(d) Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article

6252-11c, Vernon's Texas Civil Statutes), is repealed.

(c) Article 8, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed on certification by the comptroller of the implementation of the fixed asset component of the uniform statewide accounting system.

PART 7. TRANSITIONAL MATTERS

SECTION 7.01. (a) As soon as possible on or after September 1, 1991, the governor shall appoint three new members to the General Services Commission to achieve a six-member commission. The governor shall appoint one new member to a term expiring January 31, 1993, one new member to a term expiring January 31, 1995, and one new member to a term expiring January 31, 1997.

(b) Until all appointees have taken office, a quorum of the commission is a

majority of the number of members who have taken office.

(c) Sections 2.051 and 2.061, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, do not apply to a person who is a member of the State Purchasing and General Services Commission immediately before September 1, 1991, during the term the person is serving at that time.

SECTION 7.02. (a) To the extent appropriate, the General Services Commission shall exhaust its supplies of forms, publications, documents, and other consumable property bearing its former name before using new consumable

property bearing the name "General Services Commission."

(b) The first policy statement required to be filed under Subsection (j), Section 2.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

(c) The change in law to Subsection (c), Section 5.20, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), made by this Act that relates to allowing bidders at least 30 days to respond to an invitation to bid, and the change in law to Subsection (b), Section 5.22, State Purchasing and General Services Act, made by this Act that relates to allowing each private architect/engineer at least 30 days to prepare for an interview, apply only in relation to a contract for which the commission issues bid documents on or after September 1, 1991.

(d) The General Services Commission is required to identify only one of its own commercial activities for competitive cost review under Section 13.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes),

as amended by this Act, for the biennium ending August 31, 1993.

SECTION 7.03. (a) The school bus revolving fund formerly established under Section 21.180, Education Code, is abolished subject to the satisfaction of any valid outstanding obligations against the fund. The General Services Commission shall transfer any money remaining in the fund after the satisfaction of all valid outstanding obligations against the fund to the state treasury for deposit in the General Revenue Fund. The commission shall transfer any money received by the commission after the date the fund was abolished that was owed to the fund before the date the fund was abolished to the state treasury for deposit in the General Revenue Fund.

(b) The changes in law made by this Act relating to a contract for the lease of one or more school buses under Section 21.182, Education Code, and other law

apply only to a contract made on or after September 1, 1991, except that the reporting requirements added to Subsection (h), Section 21.182, Education Code, by this Act apply according to their terms to any contract under Section 21.182. Otherwise, a contract for the lease of one or more school buses that was made under Section 21.182, Education Code, before September 1, 1991, is governed by the law relating to a contract for the lease of one or more school buses by a county or local district school board in effect on the date that the contract was made, and that law is continued in effect for this purpose.

SECTION 7.04. (a) The changes in law made by Part 4 of this Act relating to the dissemination of information about the architectural barriers program, the setting and collecting of fees to recover program costs, and the transfer of that program from the General Services Commission to the Texas Department of Licensing and Regulation apply beginning September 1, 1991. All other changes in law made by Part 4 of this Act relating to the architectural barriers program do not apply until January 1, 1992, and until that date the former law governs the program and is continued in effect for this purpose.

(b) On September 1, 1991, all powers, duties, and obligations relating to the architectural barriers program are transferred from the General Services Commission to the Texas Department of Licensing and Regulation as provided by this Act. All records and property in the custody of the commission that relate to the program are transferred to the department. All appropriations to the commission for the operation of the program and all employees of the commission employed to operate the program are transferred to the department. All investigations and all filed complaints relating to the program are transferred without change in status from the commission to the department. All commission rules, standards, and specifications relating to the program remain in effect as department rules, standards, and specifications unless superseded by proper authority of the department.

SECTION 7.05. (a) A contract that was made before September 1, 1991, to which Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), applied is neither void nor voidable solely for a failure to comply with that law's requirements, if the contract was made in compliance with that law either as it was originally enacted in 1977 or as it was amended by Article 98, Chapter 773, Acts of the 66th Legislature, 1979.

(b) The changes in law made by Part 5 of this Act relating to consulting, professional, and routine services apply only to a contract or a contract extension, amendment, or renewal made on or after the effective date of this Act. A contract relating to those services that was made before the effective date of this Act is governed by the law in effect at the time the contract was made, except for matters relating to an extension, amendment, or renewal of such a contract on or after the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 7.06. The changes made by Subchapter K, Chapter 403, Government Code, as added by this Act, take effect on certification by the comptroller of the implementation of the fixed asset component of the uniform statewide accounting system.

PART 8. EFFECTIVE DATE; EMERGENCY CLAUSE

SECTION 8.01. This Act takes effect September 1, 1991. SECTION 8.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Gibson

Amend C.S.S.B. 831 as follows:

- (1) In SECTION 1.07 of the bill, strike the directory language "amending Subsection (b) and".
- (2) In SECTION 1.07 of the bill strike the amended Subsection (b) of Section 2.06.

Amendment - Gibson

Amend C.S.S.B. 831, on page 76, after line 16, by adding a new SECTION 5.05 as follows:

SECTION 5.05. Subchapter E, Chapter 12, Health and Safety Code is amended by adding Section 12.053 to read as follows:

Sec. 12.053. INVENTORY REQUIREMENTS. All equipment and supplies which are purchased through a program, contract, or grant with the department by or for qualified entities, including but not limited to individuals, corporations, local units of government and other state agencies and that are used to promote and maintain public health are exempt from the statewide personal property accounting system administered by the comptroller of public accounts described in Subchapter K, Chapter 403, Government Code. The qualified entities shall maintain complete equipment and supply records. The department may request the return of any usable equipment or supplies purchased with funds provided by the department upon the termination of the program, contract, or grant.

Amendment - Gibson

Amend C.S.S.B. 831 by striking SECTION 6.01(d) of the bill and relettering the existing SECTION 6.01(e) of the bill appropriately.

Amendment - Gibson

Amend C.S.S.B. 831 by striking SECTION 7.05 of the bill and renumbering following SECTIONS appropriately.

Amendment - Williamson

Amend C.S.S.B. 831 as follows:

- (1) In SECTION 2.30 of the bill, in Section 13.03(a) immediately after "(a) Each biennium" strike "a" and substitute "each [a]".
- (2) In SECTION 2.30 of the bill, in Section 13.03(a) immediately after "develop agency in-house cost estimates," insert "take bids for outsourcing of information resources technologies,".
- (3) In SECTION 2.30 of the bill, in Section 13.03(b) immediately after "including the workload and budget information,", insert "and copies of outsourcing bids received from the private sector,".

Amendment - Williamson

Amend C.S.S.B. 831 as follows:

- (1) After SECTION 2.01 of the bill add the following as SECTION 2.011 of the bill:
- SECTION 2.011. Section 3.022(f), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:
- (f) The commission shall make a written award of a purchase or lease to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals, except that if the commission finds that none of the offers is acceptable, it shall refuse all offers. In determining

which proposal is most advantageous to the state, the commission shall consider factors such as installation costs, the overall life of the system or equipment, the cost of acquisition, operation, and maintenance of hardware included with, associated with, or required for the system or equipment during the state's ownership or lease, and the cost of acquisition, operation, and maintenance of software included with, associated with, or required for the system or equipment during the state's ownership or lease. [The commission may not use any other factors or criteria in its evaluation.] The contract file must state in writing the basis on which the award is made.

(2) At the end of PART 7 of the bill add the following SECTION of the bill,

appropriately numbered:

SECTION ______ (a) Each member of the board of the Department of Information Resources who is serving on the board on the effective date of this Act or on the first day after the end of the Regular Session of the 72nd Legislature, whichever date is later, and who is not a member of the legislature remains a member of the board for the duration of the term for which the person was appointed except as provided by this section. An appointment to fill any remaining vacancy on the board shall be filled in accordance with Section 6, Information Resources Management Act (Article 4413(32j), Revised Statutes), as amended by this Act. If the chairman of the board on the effective date of this Act remains on the board under this section, that person remains chairman unless the governor designates a new chairman.

(b) If under Subsection (a) of this section three persons who serve for terms that expire on the same date or three persons who were not appointed from a list submitted by the lieutenant governor or the speaker of the house of representatives would remain on the board of the Department of Information Resources, the affected persons by unanimous agreement or by lot shall determine which two of the affected persons shall remain members of the board under Subsection (a) of this section.

(4) At the end of PART 5 of the bill add the following SECTIONS of the bill, appropriately numbered:

SECTION _____. Section 6, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 6. GOVERNING BOARD. (a) The department is governed by a board composed of six [mine] members appointed by the governor with the advice and consent of the senate. Two [Three] members must be appointed from a list of persons submitted to the governor by the speaker of the house of representatives[, and at least one of the persons appointed from that list must be a member of the house of representatives who serves on the board ex officio as a voting member]. Two [Three] members must be appointed from a list of persons submitted to the governor by the lieutenant governor[, and at least one of the persons appointed from that list must be a member of the senate who serves on the board ex officio as a voting member. One of the nine members must be employed by an institution of higher education as defined by Section 61.003, Education Code. In addition to the members of the legislature that must be appointed from the lists submitted by the lieutenant governor and the speaker of the house of representatives, the governor may appoint other members of the legislature to serve on the board ex officio as voting members].

(b) Members of the board serve for staggered six-year terms with two [three] members' terms expiring February 1 of each odd-numbered year.

(c) The governor shall designate the chairman of the board from among the members. The chairman serves as chairman at the will of the governor. The chairman may vote on all matters before the board.

(d) An appointment to fill a vacancy of a board member shall be made under the same procedure that applied to the original appointment for that position. If the chair is vacant, the executive director shall perform all nonvoting duties of the chairman until the governor designates a new chairman. [If it is held as a final result of an action first brought in a court of competent jurisdiction that an ex officio or other member of the board may not serve on the board under the Texas Constitution, the appropriate person shall promptly submit a list to the governor for the appointment of a replacement who may serve.]

- (e) A member of the board may not receive compensation for services as a board member. A member is entitled to reimbursement for actual and necessary expenses reasonably incurred in connection with the performance of those services, subject to any applicable limitation on reimbursement provided by the General Appropriations Act. [An ex officio member is entitled to reimbursement for those expenses under the rules of the member's office.]
- (f) A member of the board is not liable to civil action for any act performed in good faith in the performance of duties as a board member.
- (g) [Five or more members of the board constitute a quorum. A quorum must be present to conduct business. An affirmative vote of a majority of the members of the board present is necessary for an action of the board.
- [(h)] The board shall meet at least once in each quarter of the state fiscal year and may meet at other times at the call of the chairman or as provided by department rule.
- (h) [(i)] The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).
- SECTION _____ Section 7(a), Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:
 - (a) It is a ground for removal from the board if a member:
- (1) does not have at the time of appointment the [qualifications or] status required for appointment to the board;
- (2) [does not maintain during service on the board the qualifications or status required for initial appointment to the board;
 - [(3)] violates a prohibition established by Section 8 of this article;
- (3) [(4)] cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
- (4) [(5)] is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a state fiscal year unless the absence is excused by majority vote of the board.
- SECTION _____. Section 8(a), Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:
 - (a) A member of the board or an employee of the department may not:
- (1) be a person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry:
- (2) be an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;
- (3) <u>directly</u> own, control, or have[, <u>directly</u> or <u>indirectly</u>,] more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;
- (4) <u>have a direct financial interest</u> [receive more than 25 percent of the person's income from a business entity that has a substantial interest in the

information resources technologies industry and that may contract with state government;

- [(5) be interested] in [or connected with] a contract or bid for furnishing a state agency with information resources technologies;
- (5) [(6)] be paid [employed] by a state agency as a consultant on information resources technologies; or
- (6) [(7)] accept or solicit any gift or service that would reasonably tend to influence the person in the discharge of official duties or that the person knows or should know is being offered with the intent to influence official conduct [receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise].
- SECTION ______. Section 9, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended by amending Subsection (i) and adding Subsections (m) and (n) to read as follows:
- (i) The department shall establish an information resources technology evaluation center for use by the department and other state agencies. The department may accept the loan of information resources technologies and may use loaned technologies for not more than one year after the date of acceptance for the purpose of evaluation and presentations.
- (m) The department may issue requests for information and requests for proposals relating to all existing or proposed interagency projects, interagency use of a common application, or other interagency use of information resources technologies. When the department issues a request for information or request for proposals to entities outside of government, the department must comply with applicable procedures that govern such a request under Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), or under Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), as appropriate.
- (n) The department shall develop a disaster recovery plan for state agency information resources and information resources technologies for consideration by the division of emergency management in the office of the governor. The division may include all or part of the plan in the state emergency management plan. The department may provide training and technical assistance to state agency personnel related to disaster recovery procedures for information resources and information resources technologies.
- SECTION _____. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 9A to read as follows:
- Sec. 9A. COMPUTER SECURITY. (a) The department may adopt rules that govern state agency procedures related to the security of information contained in or accessible by state agency information resources technologies. Rules adopted under this section must include provisions to prevent the loss, unauthorized modification, and unauthorized disclosure of the information.
- (b) The department may provide training and technical assistance in information security to state agency personnel who are responsible for working with information contained in or accessible by state agency information resources technologies.
- (c) A state agency may take appropriate measures related to the security of its information that are in addition to the measures taken by the agency as prescribed by department rule.
- SECTION _____. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 9B to read as follows:
- Sec. 9B. SHARED USE OF RESOURCES. (a) A state agency shall respond to the department's requests for information and requests for proposals relating to

an existing or proposed interagency project, interagency use of a common application, or other interagency use of information resources technologies.

- (b) The department may determine that a state agency should make available to one or more other state agencies for specified uses information resources technologies that are in the possession of the agency. The department shall inform the state agencies concerned of its determination.
- (c) The department may determine that a state agency should modify its information resources practices in a way that allows the agency to accomplish a specified application, project, or other function performed by the agency by using information resources technologies in the possession of another agency. The department shall inform the state agency concerned of its determination.

(d) If a state agency does not act in accordance with a determination of the department under Subsection (b) or (c) of this section, the department may inform

the governor and the Legislative Budget Board of that fact.

- (e) The governor may direct a state agency to act in accordance with all or part of a determination of the department under Subsection (b) or (c) of this section. The governor may require a state agency to provide more information relating to the subject matter of the department's determination or the department's request for information or request for proposals. The state agency shall act in accordance with the governor's direction on the matter.
- .. Section 12(a), Information Resources Management Act SECTION (Article 4413(32j), Revised Statutes), is amended to read as follows:
- (a) The executive director shall prepare a state strategic plan for information resources management for the board's review and approval. The plan must:
- (1) provide a strategic direction for information resources management in state government for the five fiscal years following adoption of the plan, and provide guidance to state agencies in the development of the agency strategic plans;
- (2) establish goals and objectives relating to information resources management:
- (3) provide long-range policy guidelines for information resources in state government, including the implementation of national and international standards for information resources technologies;
- (4) identify major issues relating to improved information resources management, including the identification of needed procurement policy initiatives to encourage competition between providers of information resources technologies and a consideration of the comparative costs and advantages to the state when state agency needs are met within the agency, on an interagency basis, and through a contract with the private sector; [and]
- (5) identify functions that may be accomplished more cost-effectively through contracts with the private sector; and
- (6) identify priorities for the implementation of information resources technologies based on the relative economic and social impact on the
- SECTION . Sections 14(a) and (c), Information Resources Management (Article 4413(32j), Revised Statutes), are amended to read as follows:
- (a) Each state agency shall prepare and submit to its governing body for approval an agency strategic plan for information resources management. After the governing body has approved the plan, the [The] plan shall be signed by the governing officer or chairman of the governing body of the agency if the agency is governed by one or more fully paid full-time state officials, and otherwise by the executive director of the agency. The agency strategic plan shall be prepared in a format prescribed by the department and shall be submitted to the department for

review and approval not later than January 1 of each <u>even-numbered</u> [odd-numbered] year.

- (c) Each agency strategic plan must be consistent with the state strategic plan and include:
- (1) a statement of the agency's goals, objectives, and current programs as found in the agency's legislative appropriations request;
- (2) a description of the agency's major data bases and their applications;
- (3) a description of the agency's current information resources management organizations, policies, and practices;
- (4) a description of interagency computer networks in which the agency participates;
- (5) an assessment of the extent to which the agency could achieve its objectives through a contract with another agency or with the private sector;
- (6) [(5)] a statement of the strategic objectives of the agency relating to information resources management for the next five fiscal years, beginning with the fiscal year during which the plan is submitted, with a description of how those objectives help achieve the agency's programs and goals, and a description of how those objectives support and further the goals and policies of the state strategic plan; and
- (7) [(6)] other planning components that the department may prescribe.
- SECTION _____. Section 15, Information Resources Management Act (Article 4413(32i), Revised Statutes), is amended to read as follows:
- Sec. 15. INITIAL OPERATING PLANS. (a) Once each biennium, each state agency's information resources manager shall prepare an initial operating plan. The plan must include the information required under Subsection (b) of this section with the specificity required by the department [An agency is not required to identify specific acquisitions or the method of acquisition in the plan]. The plan must be [approved by the governing body of the agency and] submitted to the department for approval not later than the date that the agency is required to submit its first legislative appropriations request. An amended plan consistent with the changes in the agency's legislative appropriations request shall be submitted for approval to the department on the date that the agency submits an amended legislative appropriations request.
- (b) A state agency's initial operating plan must, for each request under each Legislative Budget Board assumption:
- (1) state how the agency's requested appropriations for the management, operation, and procurement of information resources would be spent;
- (2) contain a summary of the agency's needs for information resources technologies and the estimated cost of meeting those needs during the next biennium within the agency, on an interagency basis, and through a contract with the private sector;
- (3) list the existing and proposed projects, including internal development projects, for the agency during the next biennium, including:
- (A) the anticipated measurable benefits of those projects and the measurement standards used to determine those benefits;
 - (B) the major resources required to conduct the

projects;

(C) the agency's estimated total cost of each project by legislative program as found in the agency's legislative appropriations request;

(D) the cost and implementation schedule for each stage

of each project;

- (E) the number, type, approximate cost, schedule, and, if known, the planned method of acquisition for all procurements associated with each project that are subject to review under department rules; and
- (F) the estimated internal development costs for each project, including an allocation of costs for the use of fixed assets and an allocation for administrative costs;
- (4) provide an estimate, given the estimated work load, of the percentage of existing and proposed information resources technologies that will be required after all existing and proposed projects are implemented; and
- (5) provide any other information the department considers necessary.
- SECTION _____. Section 16, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended by amending Subsections (b) and (d) and adding Subsections (e) and (f) to read as follows:
- (b) At a minimum, the plan must include, in addition to the information required in the initial operating plan, the following:
- (1) the amount of money related to information resources actually appropriated to the agency for the biennium beginning September 1; [and]
- (2) an identification of changes, if any, in the agency's priorities for projects and associated procurements as set forth in the initial operating plan;
- (3) an update of the estimated costs required under Section 15(b)(2) of this article; and
- (4) any additional information required for projects under Section 18 of this article.
 - (d) A state agency shall amend its final operating plan:
 - when necessary to reflect changes in the plan during a biennium;
- (2) [. The plan shall also be amended] if necessary to show the impact of a consulting services contract or report that may affect software development, hardware configuration, or changes in the agency's management of information resources;
- (3) at the direction of the department, when a significant phase of the systems development life cycle of a project is completed; and
- (4) at the direction of the department, before a significant phase of the systems development life cycle of a project is commenced.
- (e) An amendment required under Subsection (d)(3) or (4) of this section must include the cost of accomplishing the application or proposed project under the method of implementation proposed by the agency.
- (f) The substance of any amendment submitted to the plan must also be included in an appropriate approved agency strategic plan or approved agency strategic plan amendment.
- SECTION _____. Sections 17(b), (c), (d), (e), (g), and (i), Information Resources Management Act (Article 4413(32j), Revised Statutes), are amended to read as follows:
- (b) The department shall notify a state agency in writing of the department's approval or disapproval of an initial operating plan. The department may approve or conditionally approve all or part of a plan or disapprove all or part of a plan. The notification shall be sent not later than 120 days after the date the department receives the plan.
- (c) The department shall notify a state agency in writing of the department's approval or disapproval of a final operating plan. The department may approve or conditionally approve all or part of a plan or disapprove all or part of a plan. The notification shall be sent not later than 30 days after the date the department receives the plan. If the department's determination is due after September 1 of an

odd-numbered year, a state agency may operate as if the plan had been approved until the department actually makes its determination.

- (d) If the department disapproves <u>all or part of</u> a state agency's initial operating plan or final operating plan, the department shall provide to the agency in writing the reasons for the disapproval. If the agency cannot resolve the problems that caused disapproval within 30 days after the date the notice of disapproval is received, the agency shall notify the department in writing of the reasons why the problems cannot be resolved. The notification shall be sent to the department not later than 30 days after the date that the agency receives notice of the department's disapproval.
- (e) Before a state agency may amend its final operating plan, the agency must submit the proposed amendment to the department for approval. All amendments affecting operations during a fiscal year must be submitted not later than June I of that fiscal year. The department may approve or conditionally approve all or part of a proposed plan amendment or disapprove all or part of a proposed plan amendment. The department shall notify the agency of the department's approval or disapproval not later than the 30th day after the date the proposed amendment is received. If the department disapproves all or part of a proposed amendment, the department shall state the reasons for the disapproval in writing to the agency's information resources manager. The department shall adopt rules for the procedures a state agency must follow when submitting a revision of proposed amendments to the department after the department has disapproved the amendments.
- (g) A state agency that disagrees with the department's disapproval of <u>all or part of</u> an initial operating plan, final operating plan, or an amendment to either of those plans may submit a written request to the department for special review. On receipt of a request, the executive director shall inform the board. The board shall consider the merits of the agency's position and make its decision on the matter at the next regularly scheduled board meeting. The state agency may appear and present its position at that meeting. The decision of the board is final. The board shall adopt rules for the fair and efficient administration of this subsection.
- (i) As a consequence of evaluating an initial operating plan, [or] a final operating plan, or an amendment to either of those plans, the department may require a state agency to submit or obtain comprehensive [certain] information and documentation required by the department in the format prescribed by the department [as part of its procurement process. This may be required when:
 - [(1) an agency is planning a noncompetitive procurement;
 - [(2) an agency is planning a system conversion; or
- [(3) the department determines that the information would be necessary or appropriate].

SECTION ____. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 17A to read as follows:

- Sec. 17A. COMPARATIVE COST REVIEW FOR INTERNALLY DEVELOPED APPLICATION OR PROJECT. (a) The department may conduct a comparative cost review for an application or project that a state agency has developed or implemented or proposes to develop or implement internally. In conducting the review, the department may:
- (1) base its estimate of the cost to the state of the agency's future internal development or implementation of the application or project on information it receives under Sections 14-17 of this article;
- (2) seek and obtain information from other state agencies and from nongovernmental entities on the probable cost to the state of the future development or implementation of the application or project through a contract with a state agency or with a nongovernmental entity; and

(3) require further information from the agency on the cost to the state of future internal development or implementation by the agency of the application

or project.

(b) If the department determines that the probable total future cost to the state of accomplishing the application or project through a contract with another state agency or with a nongovernmental entity would be less than 90 percent of the total probable future cost to the state of continued internal development or implementation of the application or project by the agency, the department may require the agency to issue a request for bids or a request for proposals, as provided by law, for the accomplishment of the application or project through a contract with another state agency or a nongovernmental entity.

(c) If a bid or proposal is received under Subsection (b) of this section that would allow the agency to accomplish the application or project at an acceptable level of quality and for an acceptable period for a total cost to the state of less than 90 percent of the total cost to the state of continued internal development or implementation, as that cost is determined by the department, a contract for the accomplishment of the application or project shall be awarded to the bidder with the lowest and best bid, or the offeror whose proposal is most advantageous to the

state as determined from competitive sealed proposals.

(d) Not later than January 31 of each year, the department shall provide an annual report of the comparative cost reviews it performed during the previous calendar year, including its findings and recommendations, to the Legislative Budget Board.

SECTION _____ Section 18, Information Resources Management Act (Article

4413(32j), Revised Statutes), is amended to read as follows:

Sec. 18. AUTHORIZATION FOR PROJECT DEVELOPMENT AND IMPLEMENTATION [ACQUISITION SPECIFICATIONS]. (a) A state agency may not spend appropriated money to take an action related to project development or project implementation [acquire information resources technologies] unless the action is consistent with an appropriate final operating plan or plan amendment that has already received final approval from the department or the agency first submits [the specifications for the proposed acquisition] to the department a project update, in the form of a final operating plan amendment, that includes the proposed action, and the department approves the project update plan amendment. The agency must submit specifications and documentation to the department relating to a proposed project that are sufficiently detailed and complete to allow the department to perform a meaningful and thorough review. The department shall adopt rules relating to the form and content of the specifications and documentation that must be submitted to the department. [If the agency determines that the acquisition may be obtained from only one source, the agency shall state the reasons for that determination.] The department shall determine whether:

(1) the [specifications of the] proposed project complies with statewide standards and policies contained in the state strategic plan;

(2) the form and content of the specifications and documentation submitted to the department substantially comply with department rules;

(3) the proposed project is cost effective and technically valid;

(4) there has been performed an adequate analysis of alternatives to the proposed project or to the method of developing or implementing the proposed project, including a comparative cost analysis of the probable cost to the state of development or implementation of the project through a contract with a state agency or with a nongovernmental entity; and

(5) the proposed project is [acquisition are] consistent with the appropriate final operating plan and plan amendments submitted by the agency and

approved by the department.

- (b) If the department finds that a proposed action related to a project as [the acquisition of information resources technologies] described by the project update plan amendment and the supporting specifications and documentation does not meet the criteria prescribed by Subsection (a) of this section [would be inconsistent with the appropriate plan and plan amendments], the department shall notify the state agency and, for actions taken [acquisitions made] through the State Purchasing and General Services Commission, the commission in writing of the finding and of the specific reasons for the finding. A state agency [The acquisition] may not then spend appropriated money to take the action [be made] unless the department overturns its finding.
- (c) [If the department finds that the proposed acquisition is consistent with the appropriate plan and plan amendments, or if the department does not issue the notification of its finding of inconsistency on or before the 30th day after the date that the department receives the specifications for the proposed acquisition, the acquisition may be made:
- [(d)] The department by rule may establish procedures to exempt certain projects [procurements] from the requirements of this section and to expedite the requirements of this section for certain projects [procurements]. The exempted projects [procurements] shall include technologies that are acquired through contracts and grants by an institution of higher education as defined by Section 61.003, Education Code, for [instruction or] research purposes.
- (d) [(e)] A state agency may take an action described in this article without first complying with the procedures prescribed by this article if the agency finds that a situation caused by fire, natural disaster, or other actual emergency requires the action to be taken. A report explaining the emergency action must be filed with the department not later than the 30th day after the date the action is taken.
- (e) If a state agency determines that a project action will include making an acquisition that may be obtained from only one source, the agency shall state the reasons for that determination to the department.

SECTION _____. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 18A to read as follows:

- Sec. 18A. PROCEDURE FOR CERTAIN CONTRACTS. (a) A state agency may not enter into an interagency contract for the receipt of information resources technologies, including a contract for services and a contract under Section 21 of this article, unless the agency complies with this section.
- (b) A state agency that proposes to receive information resources technologies under a contract with another state agency must first give public notice of a request for proposals or a request for bids.
- (c) A state agency may not enter into an interagency contract to receive information resources technologies if the agency receives a bid or proposal under Subsection (b) of this section under which the agency can receive the same or substantially the same technologies from a private vendor for less than 90 percent of the cost that would be incurred by the agency under the interagency contract. If a bid or proposal is received under Subsection (b) of this section that would allow the agency to accomplish the application or project at an acceptable level of quality and for an acceptable period for a total cost to the state of less than 90 percent of the total cost to the state of the best proposed interagency contract, as that cost is determined by the department, a contract for the accomplishment of the application or project shall be awarded to the bidder with the lowest and best bid, or the offeror whose proposal is most advantageous to the state as determined from competitive sealed proposals.
- (d) This section does not apply to telecommunications services provided by the State Purchasing and General Services Commission under other law.
- SECTION _____ Section 19, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 19. INFORMATION RESOURCES MANAGERS. (a) The person required to sign an agency's strategic plan, or a senior staff member designated by that person [person's designee], shall serve as the agency's information resources manager. A member of the board of the department may not also serve as the information resources manager of a state agency.

(b) If the department agrees, [performs substantially all information processing for] a state [agency, the] agency may designate the department as the agency's information resources manager. The department may by rule define the circumstances in which it may serve as an agency's information resources manager.

(c) Each state agency shall cooperate as necessary with its information resources manager to enable that person to perform the duties required of the information

resources manager by law.

- (d) The department shall adopt rules [provide guidelines to state agencies] regarding the initial and continuing education and training requirements [needed] for information resources managers [not later than September 1, 1990, to be effective on September 1, 1992]. The department may create a certification program for information resources managers and require that information resources managers be certified as prescribed by the department. Any person who is appointed the information resources manager of a state agency before September 1, 1992, is exempt from the requirements of the department regarding initial education needed for that position. The department may provide educational materials and seminars for state agencies and information resources managers.
- (e) The information resources manager is responsible for the preparation of the [operating] plans under Sections 14 [15]-17 of this article, and the annual performance report under Section 20 of this article.

Amendment - Stiles

Amend C.S.S.B. 831, as amended, by inserting a new SECTION 2.28 after line 24 and before line 25 on page 39 to read as follows:

"SECTION 2.28. Article 10, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 10.071 to read as follows:

Sec. 10.071. USE OF SYSTEM BY CERTAIN STUDENTS. (a) Institutions of higher education under Section 61.003, Education Code, that are authorized to use the system of telecommunications services established under this article may allow students of the institution who reside in housing for which the institution provides telephone service to use the system of telecommunications services established under this article. An institution shall recover from a student who chooses to use the system the full pro rata cost attributable to that student's use.

(b) The commission shall adopt rules that govern student access to the system, including times of access to the system, and the full recovery of actual costs from each student who uses the system."

Further amend C.S.S.B. 831 by renumbering existing SECTIONS 2.28 through 2.37 accordingly.

Amendment - Smithee

Amend C.S.S.B. 831 as follows:

1) On page 47, line 11, strike the period and insert the following: "except the Texas Department of Criminal Justice."

Amendment - Junell

Amend C.S.S.B. 831 by deleting Sections 2.291, 2.292, 2.30, 2.301, 2.302, 2.31, 2.32 and 2.33 and renumbering other Sections accordingly.

Amendment - Wilson

Amend the quoted new subsection (i), Section 21.174, Education Code, at Section 3.011 of C.S.S.B. 831 by substituting the date "1993" for the date "1992" at line 6, page 54, thereof.

Amendment - Stiles

Amend C.S.S.B. 831 as follows:

- (1) On page 76, between lines 16 and 17 insert the following new sections: "Section 5.05. Section 497.026(b), Government Code, is amended to read as follows:
- (b) If the State Purchasing and General Services Commission and the institutional division of the Texas Department of Criminal Justice determine [determines] that an article or product produced by the department under this subchapter does not meet the requirements of an agency of the state or a political subdivision or that the division [department] is unable to fill a requisition for an article or product, the agency or subdivision may purchase the article or product from another source.

"SECTION 5.06. Section 497.027, Government Code, is amended by adding 497.027(c) to read as follows:

(c) An agency or political subdivision that purchases goods or articles under this subchapter is not required to comply with any other state law otherwise requiring the agency or political subdivision to request competitive bids for the article or product.

Amendment - Granoff

Amend C.S.S.B. 831 at the end of PART 5 of the bill by adding the following SECTION of the bill, appropriately numbered:

SECTION ______. Section 481.027, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) and (f) to read as follows:

- (a) The department shall maintain and operate offices in foreign countries for the purposes of promoting investment that generates jobs in Texas, exporting of Texas products, tourism, and international relations for Texas. The offices shall be named "The State of Texas" offices. To the extent permitted by law, other state agencies that conduct business in foreign countries may place staff in the offices established by the department and share the overhead and operating expenses of the offices. Other state agencies and the department may enter interagency contracts for this purpose. Chapter 771 does not apply to those contracts. Any purchase for local procurement or contract in excess of \$5,000 shall be approved by the executive director prior to its execution.
- (b) The offices shall be accessible to Texas-based institutions of higher education and their nonprofit affiliates for the purposes of fostering Texas science, technology, and research development, international trade and investment, and cultural exchange. The department and the institutions may enter contracts for this purpose. Chapter 771 does not apply to those contracts.

(e) Articles 8 and 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), apply to the operation and maintenance of the offices. No other provisions of that Act apply to the operation and maintenance of the offices, or to transactions of the department that are authorized by this section.

(f) The General Services Commission may, at the request of a state agency, provide to the agency services exempted from the application of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)

under Subsection (e). Chapter 771 does not apply to services provided under this subsection. The commission shall establish a system of charges and billings that ensures recovery of the cost of providing the services and shall submit a purchase voucher or a journal voucher, after the close of each month, to the agency for which services were performed.

Amendment - Williamson

Amend C.S.S.B. 831 by adding the following SECTION to the bill, appropriately numbered, in PART 5 of the bill:

SECTION....... Section 9(i), Information Resources Management Act (Article 4413(32j), Vernon's Texas Civil Statutes), is amended to read as follows:

- (i) The department shall establish an information resources technology evaluation center for use by the department and other state agencies. The powers, objectives, and duties of the center shall include the following:
 - (1) to conduct technology-related research;

(2) to support the appropriate use of technology to deliver publicly

needed services;

(3) to collect, analyze, and assimilate information on all areas of communications and computing:

(4) to expedite the creation of advance networking and computing

system services;

- (5) to improve the state's research and economic competitiveness;
- (6) to conduct studies, investigations, and research designed to produce strategic plans for the use of technology in public services;

(7) to use research generated in the private sector to accomplish the

objectives and perform the duties of this subsection;

- (8) to contract with other state agencies to accomplish the purposes of this subsection, and all state agencies are authorized to execute contracts with the department to accomplish the objectives and perform the duties of this subsection in accordance with the Interagency Cooperation Act (Article 4413 (32) Vernon's Texas Civil Statutes);
- (9) to contract with or award grants to persons or entities outside the government in order to achieve the objectives and perform the duties listed in this subsection on the terms and conditions determined by the governing board of the department. Research contracts and grants awarded under this subsection are subject to the terms of Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes). Purchases made under an awarded research contract or grant are subject to the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), and the provisions of this Act; and
- (10) to receive state appropriations and grants from any source to be allocated at the discretion of the department to accomplish the objectives and to perform the duties of the department under this subsection or this Act.

Amendment - Oakley

Amend C.S.S.B. 831 on page 81 on line 7 by adding the following language:

SECTION 8. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.32 to read as follows:

Sec. 3.32. SAFETY STANDARDS FOR ELECTRICAL ITEMS. The commission or another state agency may not purchase an electrical item unless the

item is certified, listed, or labeled by a nationally recognized testing laboratory accredited by the federal Occupational Safety and Health Administration (OSHA).

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment on Third Reading - Willy

Amend C.S.S.B. 831 on third reading as follows:

On page 76 between lines 16 and 17, insert the following after subsection (c): "An agency may purchase an article or product with like specifications from another source, if the article or product can be purchased at a lower cost than offered by the department." With written approval of State Purchasing and General Services Commission.

This goes in section 5.06(c).

Amendment on Third Reading - Smithee

Amend C.S.S.B. 831 on third reading by inserting the following new section of the bill, appropriately numbered, in PART 2 of the bill:

SECTION _____ Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 13.031 to read as follows:

Sec. 13.031. COMPLAINT FROM PRIVATE ENTERPRISE. (a) In this section, "state agency" has the meaning assigned by Section 1.02 of this Act.

- (b) A person, including a corporation, that manufactures, processes, sells, leases, distributes, provides, or advertises goods or services for profit, or a duly chartered nonprofit corporation engaged in such activities, may file a written complaint with the executive director of the commission and with the administrative head of a state agency alleging that the state agency has engaged in unfair competition with the person or corporation. The agency shall respond to the complaint and shall furnish the complainant and the commission with a copy of its response not later than the 90th day after the date that the agency receives the complaint.
- (c) The commission shall keep a copy of each written complaint and response received under this section on file and available for public inspection for at least two years after the date that it received the complaint or response.
 - (d) This section does not apply to:
 - (1) the Texas Department of Criminal Justice; or
- (2) an institution of higher education as defined by Section 61.003, Education Code.

Amendment on Third Reading - Gibson

Amend C.S.S.B. 831 on third reading by adding the following new SECTION of the bill, to be numbered appropriately, to PART 2 of the bill:

SECTION _____. Article 4, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 4.081 to read as follows:

Sec. 4.081. NAMING OF PUBLIC BUILDINGS. Buildings owned by the state, including buildings financed under the Texas Public Finance Authority Act (Article 601d, Texas Vernon's Civil Statutes), shall be named in accordance with the following procedure:

(1) The Purchasing and General Services Commission, or its successor, shall submit names proposed for new state buildings, or proposals to re-name existing state buildings, to the presiding officers of the house and senate.

(2) Approval of names to be placed on new state buildings, or the re-naming of existing buildings, proposed by the State Purchasing and General Services Commission shall only be authorized by concurrent resolution passed in a regular or special session of the legislature and signed by the governor.

Amendment on Third Reading - Williamson

Amend C.S.S.B. 831 on third reading as follows:

(1) Add the following as Section 2.011 of the bill to PART 2 of the bill: SECTION 2.011. Section 3.01(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) "Services," as used in this article, means the furnishing of skilled or unskilled

labor or professional work but does not include:

(1) professional services covered by the Professional Services
Procurement Act (Article 664-4, Vernon's Texas Civil Statutes);

(2) services of an employee of a state agency;

(3) consulting services or services of a private consultant as defined by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes); [or]

(4) services of public utilities; or

(5) services to which Article 601i, Revised Statutes, applies.

(2) Add the following new section of the bill, appropriately numbered, to PART 5 of the bill:

SECTION _____ Title 20, Revised Statutes, is amended by adding Article 601i to read as follows:

Art. 601i. INFORMATION TECHNOLOGIES CONSULTING SERVICES

Sec. 1. DEFINITIONS. In this article:

(1) "Consulting services" means the human service of studying or advising a state agency.

(2) "Department" means the Department of Information Resources.

(3) "Information resources technologies" has the meaning assigned by Section 3, Information Resources Management Act (Article 4413(32j), Revised Statutes).

(4) "State agency" has the meaning assigned by Section 1.02(2), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

Sec. 2. APPLICABILITY. (a) This article applies to the receipt of consulting services relating to information resources technologies by a state agency under a contract that does not involve the traditional relationship of employer and employee. This article, including rules adopted by the department or governor under this article and the requirement of a finding of need by the governor, also applies to an amendment to or an extension of such a contract.

(b) Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), and the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes) do not apply to a

contract to which this article applies.

Sec. 3. CERTAIN SERVICES EXCEPTED FROM ARTICLE. The department by rule may define circumstances in which state agency procurement of certain services relating to information resources technologies that will cost less than a minimum amount established by the department are excepted from the requirements of this article, if the department determines that it would be more cost-effective for the state.

- Sec. 4. CONTRACTS VOID. (a) A contract made by a state agency for the receipt of a service that is subject to this article is void if the contract or the procedures under which the contract was awarded violate this article or a rule adopted under this article.
- (b) If a contract is void under this section, the comptroller of public accounts or a state agency may not make any payments under the contract.
- Sec. 5. FINDING OF NEED. (a) A state agency may not contract to receive consulting services relating to information resources technologies unless:
- (1) the governor issues a written finding of need for the agency to obtain the service under a contract to which this article applies; or
- (2) the contract is excepted from this article under Section 3 of this article.
- (b) The governor may adopt rules for the procedures a state agency must follow when requesting a finding of need and demonstrating the need to the governor.
- Sec. 6. REQUIRED PROCEDURES. (a) The department shall adopt rules that govern the procedures for making a contract for services under this article. The department's rules under this section:
- (1) must require adequate advance public notice of requests for bids and proposals;
- (2) may determine the form of notice required as appropriate in different circumstances;
- (3) may determine the extent to which bids, proposals, or opportunities for negotiation are most advantageous to the state and required as appropriate in different circumstances and determine the procedures for bids, proposals, and negotiations leading to the award of a contract;
- (4) may determine, based on what is most advantageous to the state, the extent to which demonstrated competence and qualifications should be taken into account when a state agency evaluates a bid or proposal in different circumstances; and
- (5) may be modeled in part on other state laws that govern bids and proposals in public contracting to the extent appropriate.
- (b) The governor may exempt a state agency from all or part of the department's rules under this section if the governor determines that an unforeseen emergency has arisen that makes compliance with all or part of the rules infeasible. For purposes of this subsection, an unforeseen emergency is an emergency that the agency could not reasonably be expected to foresee. The governor shall adopt rules for the administration of this subsection.
- Sec. 7. CONFLICTS OF INTEREST. An officer or employee of a state agency who has a financial interest in a firm or corporation that provides contracted services under this article and that submits an offer to provide services under this article to the agency or who is related within the second degree by consanguinity or affinity to a person having that financial interest shall report the financial interest to the executive head of the state agency not later than the 10th day after the date on which the contractor submits the contracted services offer.
- Sec. 8. PROCUREMENT THROUGH GENERAL SERVICES COMMISSION. (a) At the request of a state agency, the General Services Commission shall procure services that are covered by this article for the agency.
- (b) Either house of the legislature and any committee or agency of the legislature may use the services of the General Services Commission to procure consulting services.
- (c) The commission may require reimbursement for the cost it incurs when it performs a service under this section.

Amendment on Third Reading - Gibson

Amend C.S.S.B. 831 on third reading on page 59, line 23 by striking subsection (d) and replacing it with a new subsection (d) as follows:

(d) Except as otherwise provided in Subsection (e) of this section, these standards and specifications shall be adhered to in buildings defined as "public accommodation" by section 301(7) of the Americans with Disabilities Act (ADA) of 1990 [P.L. 101-336] which are constructed or substantially renovated, modified, or altered on or after the January 1, 1992 [shopping centers which contain in excess of five separate mercantile establishments; compliance with accessibility standards and specifications relative to toilet rooms shall not apply unless the shopping center elects to have public toilet rooms;

[(2) passenger transportation terminals;

- [(3) theaters and auditoriums having a seating capacity for 200 or more patrons;
- [(4) hospitals and related medical facilities which provide direct medical service to patients;

[(5) nursing homes and convalescent centers;

[(6) buildings containing an aggregate total of 20,000 or more square feet of recognizable office floor space;

[(7) funeral homes; and

[(8) commercial business and trade schools].

Amendment on Third Reading - Oakley

Amend C.S.S.B. 831 on third reading by striking SECTION 8 of the bill, as added on 2nd reading, and substituting the following as SECTION 2.075 of the bill in PART 2 of the bill:

SECTION 2.075. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.32 to read as follows:

Sec. 3.32. SAFETY STANDARDS FOR ELECTRICAL ITEMS. The commission or another state agency may not purchase an electrical item unless the item meets applicable safety standards of the federal Occupational Safety and Health Administration (OSHA).

Amendment on Third Reading - Hirschi

Amend C.S.S.B. 831 on third reading as follows:

(1) Add a new appropriately numbered section to read as follows:

SECTION . Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.202 to read as follows:

Sec. 3.202. PREFERENCE FOR ENERGY EFFICIENT PRODUCTS. The commission shall give preference to energy efficient products in purchases made under this Act if:

(1) the products meet state specifications as to quantity and quality;

and

(2) the cost of the product is equal to or less than the cost of other similar products that are not energy efficient.

(2) Renumber the existing sections of the bill as needed.

Amendment on Third Reading - Van de Putte

Amend C.S.S.B. 831 on third reading in Section 1.03 of the bill, between "national origin of the appointees." and "A", by inserting "In making appointments

under this section, the governor shall attempt to appoint members of different minority groups, including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans.

Amendment on Third Reading - Fraser

Amend C.S.S.B. 831 on third reading by adding Section ____ as follows:

SECTION 1. Section 21.901, Education Code, is amended by amending subsections (a) and (b) and adding subsection (h) to read as follows:

(a) Except as provided in this section, all contracts proposed to be made by any Texas public school board for the purchase of any personal property except for produce or vehicle fuel, shall be submitted to competitive bidding for each of the six month periods beginning September 1 and March 1 when said property is valued at \$25,000 [\$10,000] or more.

(b) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding when said contracts are valued at \$25,000 [\$10,000] or more. In this section, maintenance includes supervision of custodial, plant operations, maintenance, and ground services personnel.

(h) The board of trustees of a school district that determines it to be in the best interests of the district may delegate to a professional food services management company the authority to purchase the food and supplies required in the performance of a food service management contract between the school district and

the professional food services management company if:

(1) The professional food services management company is selected

by the board on a competitive basis; and

(2) the food and supplies are purchased by the professional food services management company in accordance with the terms of the management contract. Neither the professional food services management company nor the school district is required to comply with Subsection (a) or (d) of this section for the purpose of purchasing the food and supplies.

SECTION 2. Subchapter Z, Chapter 21, Education Code, is amended by

adding Section 21.9013 to read as follows:

Sec. 21.9013. PURCHASES UNDER \$25,000. (a) A school district shall purchase personal property for each of the six-month periods beginning September 1 and March 1 as provided by this section if the value of the property is at least \$10,000 but less than \$25,000, unless the district elects to submit a contract for the

purchase to competitive bidding.

(b) Each six-month period, the district shall publish a notice in a newspaper with general circulation in the county in which the district is located specifying the categories of personal property to be purchased and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of those categories to the district. For each category, the district shall create a vendor list consisting of each vendor that responded to the published notice and any additional vendors the district elects to include.

c) Before the district makes a purchase from a category of personal property, the district must contact at least three vendors from the list regarding pricing information for that category. If fewer than three vendors are on the list, the district

shall contact each vendor on the list.

The amendments were read.

Senator Barrientos moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 831 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Armbrister, Ratliff, Lucio, Tejeda.

SENATE BILL 935 WITH HOUSE AMENDMENTS

Senator Green called S.B. 935 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Gibson

Amend S.B. 935 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 35.53, Business & Commerce Code, is amended to read as follows:

Sec. 35.53. NOTICE OF LAW; <u>DISPUTE RESOLUTION FORUM</u> APPLICABLE TO CONTRACT. (a) This section applies to a contract, other than a contract for the construction or repair of improvements to real property located in this state, only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of \$50,000 or less; and (2) any element of the execution of the contract occurred in this state

and a party to the contract is:

(A) an individual resident of this state; or

(B) an association or corporation created under the laws

of this state or having its principal place of business in this state.

(b) If a contract to which this section applies contains a provision making the contract or any conflict arising under the contract subject to the laws of another state, to litigation in the courts of another state, or to arbitration in another state, the provision must be set out conspicuously in print, type, or other form of writing that is bold-faced, capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice. If the provision is not set out as provided by this subsection, the provision is voidable by a party against whom it is sought to be enforced.

(c) A contract which provides for the construction or repair of improvements to real property located in this state contains a provision making the contract or any conflict arising under the contract subject to the laws of another state, to litigation in the courts of another state, or to arbitration in another state, that provision is voidable by a party against whom it is sought to be enforced.

SECTION 2. The change in law made by this Act applies only to a contract for the construction or repair of improvements to real property located in this state that is executed on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment on Third Reading - Junell

Amend S.B. 935 on third reading as follows:

(1) Add SECTION 2 to read as follows:

SECTION 2. Section 16.070, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 16.070. CONTRACTUAL LIMITATIONS PERIOD. (a) Except as provided by Subsection (b), a [A] person may not enter a stipulation, contract, or agreement that purports to limit the time in which to bring suit on the stipulation, contract, or agreement to a period shorter than two years. A stipulation, contract, or agreement that establishes a limitations period that is shorter than two years is void in this state.

(b) This section does not apply to a stipulation, contract, or agreement if a party to the stipulation, contract, or agreement pays or receives, or is obligated to pay or entitled to receive, consideration under the stipulation, contract, or agreement having an aggregate value of not less than \$500,000.

SECTION 2. Section 16.071, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

- (f) This section does not apply to a contract if a party to the contract pays or receives, or is obligated to pay or entitled to receive, consideration under the contract having an aggregate value of not less than \$500,000.
 - (2) Add Section 3 to read as follows:

"Section 2 of this Act applies to a stipulation, contract or agreement entered into before, on, or after the effective date of this Act."

(3) Renumber existing sections as applicable.

The amendments were read.

Senator Green moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 935 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Whitmire, Lyon, Henderson, Haley.

SENATE BILL 1103 WITH HOUSE AMENDMENTS

Senator Sims called S.B. 1103 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Earley

Amend S.B. 1103 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the prevention of pollution from oil and gas exploration, development, and production activities, including the creation of an oil field cleanup fund and the imposition of certain fees; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.111, Section 91.112 and Section 91.113, to read as follows:

Sec. 91.111. OIL FIELD CLEANUP FUND. (a) The oil field cleanup fund

is created as a special fund in the State Treasury.

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$10 million. The oil field cleanup regulatory fees on oil and gas shall not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$6 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

- (1) penalties imposed under section 85.381 of this code for violation of a law, order, or rule relating to well plugging requirements;
- (2) Proceeds from bonds and other financial assurances required by this chapter, subject to the refund provisions of Section 91.1091 of this code;
 (3) private contributions, including contributions made under Section

89.084 of this code:

- (4) expenses collected under Section 89.083 of this code;
- (5) drilling permit fees imposed under Section 85.2021 of this code;
- (6) civil penalties collected for violations of Chapter 89 of this code or of rules or orders relating to plugging that are adopted under this code;
 - (7) proceeds collected under Section 89.085 of this code;

(8) interest earned on the funds deposited in the fund;

- (9) fees collected under Section 91.104 or Section 91.110 of this code;
- (10) civil penalties or costs recovered under Section 91.457 or Section 91.459 of this code;
- (11) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;
 - (12) costs recovered under Subsection (f) of Section 91.113.
- (13) hazardous oil and gas waste generation fees collected under Section 91.605 of this code;
- (14) oil field cleanup regulatory fees on oil collected under Section 81.116 of this of this code;
- (15) oil field cleanup regulatory fees on gas collected under Section 81.117 of this code;
 - (16) fees for a reissued certificate collected under Section 85.167 of

this code;

- (17) fees collected under Section 89.161 of this code;
- (18) fees collected under Section 91.1013(b) of this code;
- (19) fees collected under Section 89.046 of this code;

and

(20) legislative appropriations.

- Sec. 91.112. PURPOSE OF THE FUND. (a) Money in the fund may be used by the commission or its employees or agents for:
- (1) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 of this code that are causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113 of this code;
- (2) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under

this chapter, Chapter 89 of this code, or any other law administered or enforced by the commission under Title 3 of this code;

(3) implementing Subchapter N of this chapter and enforcing rules, orders, and permits adopted or issued under that subchapter; and

(4) preparing the report required under Subsection (b) of this section.

- (b) The commission shall submit to the legislature, annually, a report that reviews the extent to which the funds provided under Section 91.111 of this code have enabled the commission to better protect the environment and enhance the income of the oil field cleanup fund. The report shall include:
 - (1) the number of wells plugged;

(2) the number of wells abandoned;

(3) the number of inactive wells not currently in compliance with commission rules;

(4) the status of enforcement proceedings for all wells in violation of commission rules and the time period during which the wells have been in violation;

(5) the method by which the commission sets priorities by which it

determines the order in which abandoned wells are plugged;

(6) a projection of the amount of oil field cleanup funds needed for the next biennium for plugging of abandoned wells and remediating surface locations; and

(7) the status of implementation of the provisions of Section 89.085 of this code relating to possession and sale of equipment to recover plugging costs.

- Sec. 91.113. CLEANUP BY COMMISSION. (a) If oil and gas waste or other substances or materials regulated by the commission under Section 91.101 of this subchapter are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil field cleanup fund to control or cleanup the oil and gas wastes or other substances or materials if:
- (1) the responsible person has failed or refused to control or cleanup the oil and gas wastes or other substances or materials after notice and opportunity for hearing;
- (2) the responsible person is unknown, cannot be found, or has no assets with which to control or cleanup the oil and gas wastes or other substances or materials; or
- (3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.
- (b) For purposes of this section, "responsible person" means any operator or other person required by law, rules adopted by the commission, or a valid order of the commission to control or cleanup the oil and gas wastes or other substances or materials.
- (c) The commission or its employees or agents, on proper identification, may enter the land of another for the purpose of controlling or cleaning up oil and gas wastes or other substances or materials under this section.
- (d) The control or cleanup of oil and gas wastes or other substances or materials by the commission under this section does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes.
- (e) The commission and its employees are not liable for any damages arising from an act or omission if the act or omission is part of a good-faith effort to carry out this section.
- (f) If the commission controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules

adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission may request the attorney general to file suit in any court of competent jurisdiction in Travis County to recover these costs. Costs recovered under this subsection shall be deposited to the oil field cleanup fund.

SECTION 2. Subchapter E, Chapter 81, Natural Resources Code, is amended

by adding Sections 81,116 and 81,117 to read as follows:

Sec. 81.116. OIL FIELD CLEANUP REGULATORY FEE ON OIL. (a) An oil field cleanup regulatory fee is imposed on crude petroleum produced in this state in the amount of three-sixteenths of one cent on each barrel of 42 standard gallons.

(b) The fee is in addition to the taxes imposed under Section 81.111 of this code

and Chapter 202, Tax Code.

(c) Except as provided by Subsection (d) of this section, Chapter 202, Tax Code, applies to the administration and collection of the fee and the penalties provided by that chapter apply to any person who fails to pay or report the fee.

(d) The comptroller shall suspend collection of the fee in the manner provided

by Section 91.111 of this code.

Code.

- (e) Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited to the oil field cleanup fund as provided by Section 91.111 of this code.
- Sec. 81.117. OIL FIELD CLEANUP REGULATORY FEE ON GAS. (a) An oil field cleanup regulatory fee is imposed on gas initially produced and saved in this state in the amount of one-thirtieth of one cent for each thousand cubic feet.
- (b) The fee is in addition to the tax imposed under Section 201.052, Tax Code.
 (c) Except as provided by Subsection (d), the administration, collection, and enforcement of the fee is the same as the tax imposed under Section 201.052, Tax
- (d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 of this code.
- (e) Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited to the oil field cleanup fund as provided by Section 91.111 of this code.

SECTION 3. Section 85.164, Natural Resources Code, is amended to read as follows:

Sec. 85.164. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of its subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation, and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by subsection (c), Section 18, Administrative Procedure and Texas Register Act (article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4. Subchapter E, Chapter 85, Natural Resources Code, is amended

by adding Section 85.167 to read as follows:

Sec. 85.167. FEE FOR REISSUED CERTIFICATE. (a) If a certificate of compliance has been canceled, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of \$100.

(b) Fees collected under this section shall be deposited to the oil field cleanup fund.

SECTION 5. Subsections (a) and (b) of Section 85.2021, Natural Resources Code, are amended and a new subsection (d) is added to read as follows:

(a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a fee of \$300 [\$100]. Additionally, the applicant shall submit a fee of \$50 when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(c) Drilling permit fees collected under this section shall be deposited in the state oil field cleanup well plugging fund. Fees to expedite a drilling permit

application shall be deposited in the general revenue fund.

SECTION 6. Subchapter D, of Chapter 89, Natural Resources Code, is

amended by adding a new Section 89.046 to read as follows:

Sec. 89.046. RESPONSIBILITY TO PLUG WELL; FEES. (a) A person to whom the commission has issued a drilling permit or a transfer permit shall be deemed the operator of the well and is responsible for plugging of the well covered by the permit until:

(1) the well has been plugged in accordance with the rules and orders

of the commission; or

(2) the commission has issued a transfer permit to another operator

and a transfer fee has been paid to the commission.

(b) Upon the issuance of the transfer permit and payment of the transfer fee, full responsibility for the plugging of all transferred wells shall be with the new operator.

(d) The commission shall set the transfer permit fee in an amount not to exceed \$150. Transfer fees collected under this subsection shall be deposited to the oil field cleanup fund.

SECTION 7. Section 89.083(d), Natural Resources Code, is amended to read as follows:

(d) Money collected in a suit under this section shall be deposited in the state oil field cleanup [well plugging] fund.

SECTION 8. Section 89.121(b), Natural Resources Code, is amended to read

as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the state oil field cleanup [well plugging] fund.

SECTION 9. Section 91.103, Natural Resources Code, is amended to read as follows:

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BONDS FOR OIL FIELD CLEANUP. [(a)] Before approval of an application, the commission shall [may] require the following persons to execute and file with the commission a bond or alternate form of financial security:

(1) an applicant to drill a new well or redrill, rework, plug back or

deepen an old well;

(2) any operator of an oil and gas well in this state or person required to file a statement of organization as required in Section 91.142 of this code; an operator who has acquired a producing well and who is requesting authorization to connect a producing well or wells to a pipeline or other outlet; and

(3) an operator filing a well potential form who has reworked and brought into production a previously nonproducing well, resulting in making an application for an allowable for production of oil and gas from the well; and

(4) an

(b) The commission may require the filing of a bond by any] operator seeking an exception to the well plugging requirements established by law or rules and orders of the commission.

SECTION 10. Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. AMOUNT OF BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY. (a) The commission shall require a bond or an alternate form of financial security to be filed with the commission as provided by Subsection (b) of this section.

(b) A person required to file a bond under Section 91.103 of this code may choose to file:

(1) an individual bond as provided under Section 91.1041 of this code; (2) a blanket bond as provided under Section 91.1042 of this code;

(3) if the person can demonstrate to the commission an acceptable record of compliance with all water protection rules and other orders of the commission, an annual full financial statement prepared and certified by a certified public accountant showing assets and liabilities and reflecting a net worth equal to or more than \$500,000; or

(4) a non-refundable annual fee equal to four percent (4%) of the bond that otherwise would be required. [The commission may require that the bond be in an amount equal to the cost of plugging each well or in a blanket amount designed to assure the proper plugging of all wells drilled, to be drilled, or to be operated in this state.]

SECTION 11. Chapter 91, Natural Resources Code, is amended by adding Sections 91.1041 and 91.1042 to read as follows:

Sec. 91.1041. INDIVIDUAL BOND. An applicant for the drilling of a new well, or for redrilling, deepening, plugging back or reworking an old well or an operator required to file a bond under Section 91.103 shall file a bond in an amount equal to \$2 for each foot of well depth for each well.

Sec. 91.1042. BLANKET BOND. An applicant or operator required to file a bond under Section 91.103 may file a blanket bond to cover all wells for which a bond is required as follows:

(1) an applicant or operator who operates 10 or fewer wells shall file a \$25,000 blanket bond;

(2) an applicant or operator who operates more than 10 but fewer than 100 wells shall file a \$50,000 blanket bond; and

(3) an applicant or operator who operates 100 or more wells shall file a \$250,000 blanket bond.

SECTION 12. Section 91.105, Natural Resources Code, is amended to read as follows:

Sec. 91.105. BOND CONDITIONS. Each bond required by Section 91.103 of this code shall be conditioned that the operator will plug and abandon all the wells and control, abate and cleanup pollution associated with an operator's oil and gas activities covered under the bond in accordance with the law of the state and the permits, rules and orders of the commission.

SECTION 13. Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND OR FINANCIAL STATEMENT. If a well covered by a bond or financial statement is transferred, sold, or assigned by its operator, the commission shall [may] require the party acquiring the well to file [execute] a new bond or financial statement as provided by this subchapter, and the bond or financial statement of the prior operator shall remain in effect until the new bond or financial statement is provided, or the commission determines that the financial security previously submitted to the commission by the person acquiring the well complies with this subchapter [is provided or filing of the bond is waived].

SECTION 14. Subchapter D, Chapter 91, Natural Resources Code is amended by adding Section 91.110 to read as follows:

Sec. 91.110. FILING OF A DRILLING PERMIT APPLICATION. (a) The commission may not accept an application under Section 85.2021 if:

(1) an officer, director, general partner, owner of more than 25 percent ownership interest, or trustee of the organization has within the five years preceding the date on which the report is filed, held a position of ownership or control in the organization for which the application is filed or in any other organization registered with the Commission; and

(2) during that period of ownership or control, the organization violated a provision of this title or a commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(b) An organization has committed a violation if:

(1) an order finding the violation has been entered against the organization and all appeals have been exhausted; or

(2) the Commission and the organization have entered into an agreed

order relating to the alleged violation.

(c) A person holds a position of ownership or control in an organization if the person is:

(1) an officer or director;

(2) a general partner;

(3) the owner of a sole proprietorship;

(4) the owner of more than a 25% ownership interest; or

(5) the designated trustee.

(d) The commission shall accept the application if:

(1) the conditions that caused the refusal to accept are corrected;

(2) all administrative, civil, and criminal penalties relating to those conditions are paid; and

(3) all reimbursements of costs and expenses authorized to be

collected in relation to those conditions are collected.

SECTION 15. Section 91.1013, Natural Resources Code, is amended to read

Sec. 91.1013. APPLICATION FEES [FEE]. (a) With each application for a fluid injection well permit, the applicant shall submit to the commission a nonrefundable fee of \$100. In this section, "fluid injection well" means any well used to inject fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil and gas waste disposal well regulated by the commission pursuant to Chapter 27, Water Code.

(b) With each application for a permit to discharge to surface water under this chapter and commission rules, other than a permit for a discharge that meets National Pollutant Discharge Elimination System requirements for agricultural or wildlife use, the applicant shall submit to the commission a nonrefundable fee of \$200

(c) Fees collected under Subsection (b) of this section shall be deposited in the state oil field cleanup fund.

SECTION 16. Section 91.108, Natural Resources Code, is amended to read as follows:

Sec. 91.108. DEPOSIT OF FUNDS. <u>Subject to the refund provisions of Section 91.1091 of this code, proceeds [Proceeds]</u> from bonds required pursuant to state well plugging requirements shall be deposited in the <u>oil field cleanup</u> [state well plugging] fund.

SECTION 17. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.1091 to read as follows:

Sec. 91.1091. REFUND. The commission shall refund the proceeds from a bond or other from of security required under this subchapter if:

(1) the conditions that caused the proceeds to be collected are corrected;

(2) all administrative, civil, and criminal penalties relating to those conditions are paid; and

(3) all reimbursements of costs and expenses authorized to be collected in relation to those conditions are collected.

SECTION 18. Section 91.109, Natural Resources Code, is amended to read as follows:

Sec. 91.109. DISPOSAL SITE BOND. A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 of this code, proceeds [Proceeds] from any bond or other form of financial security required by this section shall be placed in the oil field cleanup fund [well plugging fund provided by Section 89.152 of this code]. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

SECTION 19. Section 91.457(b), Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) of this section fails or refuses to close the pit in compliance with the commission's order and rules, the commission may [shall] close the pit using money from the oil field cleanup fund and may [shall] direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

SECTION 20. Section 91.459(c), Natural Resources Code, is amended to read as follows:

(c) Any penalties or costs recovered by the attorney general under this subchapter [Section 91.457 of this code] shall be deposited in the oil field cleanup fund [a saltwater disposal fund].

SECTION 21. Chapter 91, Natural Resources Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. OIL AND GAS HAZARDOUS WASTE

Sec. 91.601. DEFINITIONS. In this subchapter: (1) "Oil and gas hazardous waste" means oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and

Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(2) "Oil and gas waste" means oil and gas waste as defined in Section 91.1011 of this chapter.

Sec. 91.602. RULES. (a) To protect human health and the environment, the commission shall adopt and enforce rules and orders and may issue permits relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

(b) The rules adopted by the commission under this section must be consistent with the hazardous waste regulations adopted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended. The commission may adopt and enforce rules that are more

stringent than the federal hazardous waste regulations if necessary to protect human health.

Sec. 91.603 ACCESS TO PROPERTY AND RECORDS. (a) A member or employee of the commission, on proper identification, may enter public or private property to:

(1) inspect and investigate conditions relating to the generation, transportation, treatment, storage, or disposal of oil and gas hazardous waste;

(2) inspect and investigate conditions relating to the development of rules, orders, or permits under Section 91.602 of this code;

(3) monitor compliance with a rule, order, or permit of the commission; or

(4) examine and copy, during reasonable working hours, those records or memoranda of the business being investigated.

(b) A member or employee acting under this section who enters an establishment on public or private property shall observe the posted safety, internal security and fire protection rules.

Sec. 91,604. CRIMINAL PENALTY. (a) A person who knowingly violates a rule, order, or permit of the commission issued under this subchapter commits an offense.

(b) An offense under this section is punishable by imprisonment for up to six months, by a fine of up to \$10,000 for each day the violation is committed, or by both.

(c) Venue for prosecution under this section is in the county in which the violation is alleged to have occured.

Sec. 91.605. HAZARDOUS OIL AND GAS WASTE GENERATION FEE.

(a) An annual fee is imposed on each operator who generates hazardous oil and gas waste.

(b) The commission by rule shall set the fee, which must:

(1) be based on the volume of hazardous oil and gas waste generated by the operator; and

(2) be reasonably related to the costs of implementing this subchapter and enforcing the rules, orders, and permits adopted under this subchapter.

(c) The commission by rule shall also prescribe the procedures by which an operator must account for the volume of hazardous oil and gas waste generated and pay the fee.

(d) This section does not apply to an operator who, at all facilities operated in this state, satisfies the requirements established by the administrator of the United States Environmental Protection Agency for a conditionally exempt small quantity generator.

(e) The fees collected under this section shall be deposited in the oil field cleanup fund.

SECTION 22. Section 29.001, Water Code, is amended to read as follows: Sec. 29.001. SHORT TITLE. This chapter may be cited as the Oil and Gas Waste [Salt Water] Haulers Act.

SECTION 23. Section 29.002(3) and (4), Water Code, are amended to read as follows:

(3) "Oil and gas waste" means oil and gas waste as defined by Section 91.1011, Natural Resources Code, and includes ["Salt water" means] water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

(4) "Hauler" means a person who transports oil and gas waste [salt water] for hire by any method other than by pipeline.

SECTION 24. Section 29.011, Water Code, is amended to read as follows:

Sec. 29.011. APPLICATION FOR PERMIT. Any person may apply to the railroad commission for a permit to haul and dispose of oil and gas waste [salt water].

SECTION 25. Section 29.013, Water Code, is amended to read as follows: Sec. 29.013. CONTENTS OF APPLICATION. The application for a permit shall:

(1) state the number of vehicles the applicant plans to use for [salt-water] hauling oil and gas waste;

(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of oil and gas waste [salt water];

(3) include an affidavit from a person who operates an approved system of oil and gas waste [salt water] disposal stating that the applicant has permission to use the approved system;

(4) state the applicant's name, business address, and permanent mailing address; and

(5) include other relevant information required by railroad commission rules. SECTION 26. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE [BOND]. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil field cleanup fund [Before issuing a permit to a person whose application it has approved, the railroad commission shall require the person to file with it a bond in the amount of \$5,000, guaranteed by a corporate surety company and conditioned on the payment of full damages to any person who may acquire a judgement against the permittee for damages done to the person's property by the permitte's improper hauling, handling, or disposal of salt water. However, the railroad commission may dispense with the bond requirement on a proper showing of financial responsibility].

SECTION 27. Section 29.034, Water Code, is amended to read as follows: Sec. 29.034. ACCESS TO PROPERTY. Members and employees of the railroad commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the hauling of oil and gas waste [salt water], to monitor compliance with a rule, permit, or other order of the railroad commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's posted safety, internal security, and fire protection rules.

SECTION 28. Section 29.041, Water Code, is amended to read as follows: Sec. 29.041. HAULING WITHOUT PERMIT. No hauler may haul or [and] dispose of oil and gas waste [salt water] off the lease, unit, or other oil or gas property where it is generated [produced] unless the hauler has a permit issued under this chapter.

SECTION 29. Section 29.042, Water Code, is amended to read as follows: Sec. 29.042. EXCEPTIONS [EXCEPTION]. (a) A person may haul oil and gas waste [salt water] for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

(b) The commission by rule may except from the permitting requirements of this chapter specific categories of oil and gas waste other than salt water.

SECTION 30. Section 29.043, Water Code, is amended to read as follows: Sec. 29.043. USING HAULERS WITHOUT PERMIT. No person may knowingly utilize the services of a hauler to haul or [and] dispose of oil and gas waste [salt water] off the lease, unit, or other oil or gas property where it is generated [produced] if the hauler does not have a permit as required under this chapter.

SECTION 31. Section 29.044, Water Code, is amended to read as follows: Sec. 29.044. DISPOSING OF OIL AND GAS WASTE [SALT WATER]. (a) No hauler may dispose of oil and gas waste [salt water] on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal facility [pit] without written authority from the railroad commission.

(b) No hauler may dispose of oil and gas waste [salt water] on property of another in other than a railroad commission-approved disposal facility without the written authority of the landowner.

SECTION 32. Section 29.045, Water Code, is amended to read as follows: Sec. 29.045. USE OF UNMARKED VEHICLES. No person who is required to have a permit under this chapter may haul oil and gas waste [salt water] in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

SECTION 33. The following laws are repealed:

- (1) Section 91.459(d), Natural Resources Code; and
- (2) Subchapter F, Chapter 89, Natural Resources Code.

SECTION 34. (a) All funds in the well plugging fund under Section 89.151, Natural Resources Code, repealed by this Act, are transferred to the oil field cleanup fund, Section 91.111, Natural Resources Code, as added by this Act.

(b) For the purpose of determining whether a bond or other security may be required under a provision of the Natural Resources Code amended or added by this Act, the Railroad Commission of Texas may consider violations of state law or commission rules, orders, or permits without regard to whether the violations occurred before, on, or after the effective date of this Act.

SECTION 35. Fees imposed under Sections 85.2021, 81.116 and 81.117, Natural Resources Code, are repealed effective August 31, 1999.

SECTION 36. This Act takes effect September 1, 1991, except that SECTIONS 22 through 25 and SECTIONS 27 through 32 take effect January 1, 1992

SECTION 37. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Earley

(1) Amend C.S.S.B. 1103, on page 9, by inserting on line 30, after "Commission":

"for the previous 48 months and the person, its offices, directors, general partners, or owners of more than 25% ownership interest or trustee of the (person/organization):

- 1) has no outstanding violation of such commission rules or orders;
- 2) has paid all administrative, civil, and annual penalties, if any, relating to any such violation of a commission rule or order; and
- 3) has paid all reimbursements of any such costs and expenses authorized and relating to such a commission rule or order, an annual non-refundable fee of \$100.
- (2) Strike the existing language after "commission," on line 30, page 9 of subdivision (3).

Amendment - Ogden

Amend C.S.S.B. 1103 as follows:

Insert on page 10 between lines 8 and 9 subparagraph (5) to Sec. 91.104. (5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the Individual Bond value of Sec. 91.1041 or any of the Blanket Bond values of Sec. 91.1042.

The amendments were read.

Senator Sims moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1103 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chair; Bivins, Armbrister, Sibley, Brown.

CONFERENCE COMMITTEE ON HOUSE BILL 841

Senator Armbrister called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 841 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 841 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Lyon, Brown, Harris of Tarrant, Sibley.

CONFERENCE COMMITTEE ON HOUSE BILL 1679

Senator Montford called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 1679 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 1679 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chair; Zaffirini, Brooks, Haley, Tejeda.

SENATE BILL 532 WITH HOUSE AMENDMENT

Senator Ellis called S.B. 532 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Berlanga

Amend S.B. 532 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to securing criminal history record information for the employees of public school districts or employees of a public or commercial transportation company that contracts with a school district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Section 21.917, Education Code, is amended by amending Subsections (a), (c), and (f) and adding Subsection (h) to read as follows:

(a) A school district shall obtain criminal history record information that relates to an applicant to whom an offer of employment is being considered by the district [for employment]. A district is not required to obtain information under this section, but may do so, if the applicant was initially certified by the State Board of Education in the year preceding the date of application.

(c) A school district may use information obtained under this section as provided by this section [only for the purpose of evaluating applicants for

employment].

(f) Criminal history record information obtained under this section is privileged information and is for the use of the district and the Central Education Agency only. A person commits an offense if the person [who] releases or discloses the information to any [other] person[,] other than to the subject of the report, the Central Education Agency, or to the chief personnel officer of a public or commercial transportation company as provided by Subsection (h) of this section [commits an offense]. An offense under this section is a Class A misdemeanor.

(h) A school district shall also obtain criminal history record information that relates to an employee, or an applicant to whom an offer of employment is being considered, of a public or commercial transportation company if the company contracts with a school district to provide transportation services and the employee or applicant is retained to, or is applying for a position to, drive a bus in which students of that district are transported, provided that:

1) in the case of criminal history record information for such employees or applicants of a commercial transportation company, the company shall submit the names of such employees and applicants to the district together with the other identification data required to obtain criminal history information. If the school district obtains information that an employee or applicant has been convicted of a felony or an offense involving moral turpitude, the district shall inform the company's chief personnel officer of the person's name, and the company may not employ the person to drive a bus in which the students are transported; and

2) in the case of criminal history record information for such employees or applicants of a public transportation company, the company shall make available the names of such employees and applicants to the district together with the other identification data required to obtain criminal history information. If the company obtains information that an employee or applicant has been convicted of a felony or an offense involving moral turpitude, the company may not employ the person to drive a bus in which the students are transported.

The company and its employees shall hold the information in confidence for the limited purpose for which it was provided.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

On motion of Senator Ellis and by unanimous consent, the Senate concurred in the House amendment to S.B. 532 by a viva voce vote.

(Senator Parker in Chair)

SENATE BILL 757 WITH HOUSE AMENDMENTS

Senator Green called S.B. 757 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Eckels

Amend S.B. 757 as follows:

- (1) On page 9, line 8, strike "72 hours" and substitute "three working days".
- (2) On page 9, line 14, between "(5)" and "transfer", insert "sell, trade, or".
- (3) on page 13, line 11, strike "on a form prepared by the agency"
- (4) on page 37, line 9, between "completion" and "as", insert ", supplied by the Central Education Agency,".

Amendment - Eckels

Amend S.B. 757 by adding appropriately numbered sections to read as follows:

- SECTION 1. Subsection (a), Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:
- (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 39, 40, 51, or 186 committed while operating a motor vehicle, the defendant shall be advised by the court of his right to successfully complete a driving safety course and the court:
- (1) in its discretion may defer proceedings and allow the person 90 days to present a uniform certificate of course completion as evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved under the Texas Proprietary School Act (Chapter 32, Education Code) or other driving safety course approved by the court; or
- (2) shall defer proceedings and allow the person 90 days to present a uniform certificate of course completion as written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved under the Texas Proprietary School Act (Chapter 32, Education Code) or another driving safety course approved by the court, if:
- (A) the person, except as provided by Subsection (a-2) of this section, enters a plea in person or in writing of No Contest or Guilty and presents to the court an oral request or a written request, in person or by mail postmarked on or before the answer date on the citation to take a course;

(B) the court enters judgment on the person's plea of No Contest or Guilty at the time the plea is made but defers imposition of the judgment for 90 days;

(C) the person has a valid Texas driver's license or

permit;

(D) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense;

(E) the person files an affidavit with the court stating that the person is not in the process of taking a course under this subdivision and has not completed a course under this subdivision that is not yet reflected on the person's driving record; and

(F) the offense charged is for an offense covered by this section other than speeding 25 miles per hour or more over the posted speed limit at the place where the alleged offense occurred.

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

Amendment - Eckels

Amend S.B. 757 as follows:

(1) Insert a new SECTION 4 in the bill to read as follows:

SECTION 4. Article 45.54, Code of Criminal Procedure, is amended to read as follows:

- Art. 45.54. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (1) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only[; other than a misdemeanor case disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);] and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days.
- (2) During the deferral period, the justice shall require the defendant to successfully complete a Central Education Agency-approved driving safety course, if the offense alleged is an offense involving the operation of a motor vehicle.
- (3) During said deferral period, the justice may require the defendant to:

 (a) post a bond in the amount of the fine assessed to secure payment of the fine;
- (b) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
 - (c) submit to professional counseling; and
 - (d) comply with any other reasonable condition.
- (4) [(3)] At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

- (5) [(4)] If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.
- (6) [(5)] Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.
- (2) Renumber existing SECTION 4 and subsequent sections appropriately.

Amendment on Third Reading - Eckels

Amend S.B. 757 on third reading by striking Subsection (a), Section 143A (SECTION 2 of the bill), as amended by Amendment 2 on second reading, and substitute the following:

- (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 39, 40, 51, or 186 committed while operating a motor vehicle, the defendant shall be advised by the court of his right to successfully complete a driving safety course and the court:
- (1) in its discretion may defer proceedings and allow the person 90 days to present a uniform certificate of course completion as evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) [the Texas Proprietary School Act (Chapter 32, Education Code) or other driving safety course approved by the court]; or
- (2) shall defer proceedings and allow the person 90 days to present a uniform certificate of course completion as written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved under the Texas <u>Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes)</u> [Proprietary School Act (Chapter 32, Education Code) or another driving safety course approved by the court], if:
- (A) the person[, except as provided by Subsection (a-2) of this section;] enters a plea in person or in writing of No Contest or Guilty and presents to the court an oral request or a written request, in person or by mail postmarked on or before the answer date on the citation, to take a course;
- (B) the court enters judgment on the person's plea of No Contest or Guilty at the time the plea is made but defers imposition of the judgment for 90 days;
 - (C) the person has a valid Texas driver's license or

permit;

- (D) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense;
- (E) the person files an affidavit with the court stating that the person is not in the process of taking a course under this subdivision and has not completed a course under this subdivision that is not yet reflected on the person's driving record; and
- (F) the offense charged is for an offense covered by this section other than speeding 25 miles per hour or more over the posted speed limit at the place where the alleged offense occurred.

The amendments were read.

Senator Green moved to concur in the House amendments to S.B. 757.

The motion prevailed by the following vote: Yeas 31, Nays 0. SENATE BILL 992 WITH HOUSE AMENDMENT

Senator Whitmire called S.B. 992 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Saunders

Amend S.B. 992 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the application of statutes that classify political subdivisions according to population.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Section 16.14, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16.14. CONTEST OF ELECTION; BOND. At any time prior to the entry of a final judgment in the proceedings, any party may ask the court to dismiss the contestant's action unless the contestant posts a bond with sufficient surety, approved by the court, payable to the movant for the payment of all damages and costs that may accrue by reason of the delay that will be occasioned by the continued participation of the contestant in the proceedings in the event that the contestant fails to finally prevail and obtain substantially the judgment prayed for in the petition. The court shall then issue an order directed to the contestant, which order, together with a copy of the motion, shall be served on all parties, or on their attorney of record, personally or by registered mail, requiring the contestant to appear at the time and place, not sooner than five nor later than 10 days after receipt of the order and motion, as the court may direct, and show cause why the motion should not be granted. The maximum bond that the court may set is \$10,000 for contests of elections for tracks to be located in a county with a population of less than 1.18 million [900.000], according to the most recent federal census. The maximum bond that the court may set is \$100,000 for contests of elections for tracks to be located in a county with a population of 1.18 million [900,000] or more, according to the most recent federal census. Motions with respect to more than one contestant may be heard together if so directed by the court. Unless at the hearing on the motion the contestant establishes facts that in the judgment of the court would entitle the contestant to a temporary injunction against the issuance of licenses on the basis of the election in question, the court shall grant the motion of the movant and in its order the court shall fix the amount of the bond to be posted by the contestant in an amount found by the court to be sufficient to cover all damages and costs that may accrue by reason of the delay that will be occasioned by the continued participation of the contestant in the proceedings in the event that the contestant fails to prevail and obtain substantially the judgment prayed for in its petition.

SECTION 2. Section 2(a), Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The governing body of any issuer shall be authorized to refund all or any part of any of its outstanding bonds, notes, or other general or special obligations by the issuance of refunding bonds to be sold for cash in such principal amounts as are necessary to provide all or any part of the money required to pay the principal of any obligations being refunded and the interest to accrue on said obligations to

the maturity thereof, and/or to provide all or any part of the money required to redeem any obligations being refunded, prior to maturity, on any date or dates upon which said obligations are subject to such redemption, including principal, and any required redemption premium, and the interest to accrue on said obligations to said redemption date or dates. Said refunding bonds shall be sold for not less than their par value plus accrued interest to date of delivery, shall mature not more than forty years from their date, and shall bear interest at any rate or rates as shall be determined within the discretion of the governing body of the issuer. Such refunding bonds may be secured by and made payable from the same source as the obligations being refunded thereby, or may be secured by and made payable from taxes or revenues, or both, or any other or different source, or any combination of sources, if the issuer is otherwise authorized by the Texas Constitution or any statute to secure or pay any kind or type of bonds by or from any such source. Said refunding bonds may be issued in combination with new bonds, and/or with provision for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions, and with such security, as may be set forth in the proceedings authorizing the issuance of said refunding bonds, all within the discretion of the governing body of the issuer; provided, however, that no such bonds shall be issued contrary to the provisions of the Texas Constitution. All refunding bonds issued pursuant to this Act may be issued without any election in connection with the issuance thereof or the creation of any encumbrance in connection therewith; except that if the Texas Constitution would require an election or vote to permit any procedure, action, or matter pertaining to such refunding bonds, then an election to authorize any such procedure, action, or matter shall be held substantially in accordance with Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, to the extent practicable, applicable, and appropriate. All bonds permitted to be issued under this Act, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with the Texas Constitution and this Act he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, without the surrender, exchange, or cancellation of the obligations being refunded; and notwithstanding any provisions of this Act to the contrary, such bonds shall be so registered before the making of the deposit with the State Treasurer as required hereunder, and such refunding bonds may be sold and delivered to the purchaser thereof in order to permit the issuer to use the proceeds from such sale and delivery to make all or any part of said deposit. After such approval and registration, such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes. All refunding bonds issued under this Act, shall be legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees and guardians, and for the interest and sinking funds and other public funds of any issuer, as such term is defined in this Act. Said refunding bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and of any issuer, as such term is defined in this Act, to the extent of the market value of said refunding bonds, when accompanied by any unmatured interest coupons appurtenant thereto. Notwithstanding any provisions of this Act to the contrary, no refunding bonds shall be issued hereunder unless the obligations to be refunded are scheduled to mature or are subject to redemption prior to maturity within not more than five years from the date of the refunding bonds; and no refunding bonds shall be issued hereunder to refund electric and gas system revenue bonds issued by any city having a population in excess of 900,000 [500,000], according to the most recent federal census.

SECTION 3. Section 3, Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. Said refunding bonds shall mature serially or otherwise in not more than forty years from their date, and shall bear interest at any rate or rates as shall be determined within the discretion of the governing body of the issuer. Such refunding bonds may be secured by and made payable from the same source as the obligations being refunded thereby, or may be secured by and made payable from taxes or revenues, or both, or any other or different source, or any combination of sources, if the issuer is otherwise authorized by the Texas Constitution or any statute to secure or pay any kind or type of bonds by or from any such source. Said refunding bonds may be issued in combination with new bonds, and/or with provision for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions, and with such security, as may be set forth in the proceedings authorizing the issuance of said refunding bonds, all within the discretion of the governing body of the issuer, provided, however, that no such bonds shall be issued contrary to the provisions of the Texas Constitution. All refunding bonds issued pursuant to this Act may be issued without any election in connection with the issuance thereof or the creation of any incumbrance in connection therewith, except that if the Texas Constitution would require an election or vote to permit any procedure, action, or matter pertaining to such refunding bonds, then an election to authorize any such procedure, action, or matter shall be held substantially in accordance with Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, to the extent practicable, applicable, and appropriate. Notwithstanding any provisions of this Act to the contrary, no refunding bonds shall be issued hereunder to refund electric and gas system revenue bonds issued by any city having a population in excess of 900,000 [500,000], according to the most recent federal census.

SECTION 4. Section 1, Chapter 589, Acts of the 64th Legislature, Regular Session, 1975 (Article 717n-1, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 1. Any county having a population in excess of 1.5 million [1,000,000], according to the most recent Federal Census, is authorized, subject to the limitations contained in this Act, to issue certificates of indebtedness:
- (1) in the amount of not more than \$2,000,000 for the purpose of constructing, enlarging, furnishing, equipping and repairing county buildings and other permanent improvements; and
- (2) in the amount of not more than \$3,500,000 for the purchase of right-of-way in participation with the Texas Highway Department in connection with designated state highways and for the construction of curbs, gutters and drainage facilities for such designated highways.
- (3) If bonds are not issued under this Act by January 1, 1980, this Act will no longer be in effect.
- SECTION 5. Section 11(c), Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:
- (c) A city of at least 250,000 [150,000 to 170,000] according to the last preceding decennial census located in a county with a principal city having a population of less than 800,000 according to the last preceding decennial census may join a separate authority upon otherwise complying with the terms of this Act. In such event thereafter, should a separate authority be established in a county with a principal city of less than 800,000 population according to the last preceding decennial census, any city within such county which has voted to participate with any authority created pursuant to this Act shall have the following options at that

time: to remain a part of the earlier created authority, to join the new authority in the county in which the city is located, or to participate with both authorities. Provided that any such city wherein capital improvements have been previously made at its request by an authority must upon its transfer to a different authority or participation with more than one authority continue to honor reimbursement obligations resulting from such improvements.

SECTION 6. Section 24(a), Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

- (a) Nothing contained in this Act shall require any city with a population in excess of 250,000 [150,000], according to the most recent population estimates of the appropriate metropolitan planning organization and with boundaries contiguous to a principal city, or any city with boundaries contiguous to a principal city and with boundaries extending into two or more adjacent counties, two of which counties include a principal city, to be a part of or participate in the regional transportation authority provided herein. Such cities shall be called "contiguous cities."
- SECTION 7. Section 1(a), Chapter 902, Acts of the 71st Legislature, Regular Session, 1989 (Article 1269j-16, Vernon's Texas Civil Statutes), is amended to read as follows:
- (a) In a city having a population of <u>one million</u> [900,000] or more according to the most recent federal census, a person commits an offense if he intentionally or knowingly:
- (1) uses, possesses, or wears a badge, identification card, insignia, shoulder emblem, or uniform of the police department of the city or other item bearing an insignia of the police department;
- (2) uses the name of the police department, within the jurisdiction of the police department, in connection with an object to create the appearance that the object belongs to or is being used by the police department;
- (3) uses, possesses, or wears a badge, identification card, insignia, shoulder emblem, or uniform within the jurisdiction of the police department that is deceptively similar to that of the police department within whose jurisdiction the use, possession, or wear occurs;
- (4) uses, possesses, or operates a marked patrol vehicle within the jurisdiction of the police department that is deceptively similar to that of the police department within whose jurisdiction the use, possession, or operation occurs.
- SECTION 8. Section 1, Chapter 364, Acts of the 60th Legislature, Regular Session, 1967 (Article 2372d-4, Vernon's Texas Civil Statutes), is amended to read as follows:
- Sec. 1. The commissioners court of any county which has a population in excess of one million [500,000] according to the most recent federal census and which has issued bonds for the purpose of constructing buildings and other permanent improvements to be used for coliseums and auditoriums within the county, upon finding that it is to the best interest of the county and its inhabitants, shall have the power to construct, enlarge, furnish, equip, and operate parking stations in the vicinity of such coliseums and auditoriums. Any said commissioners court is further authorized to lease said parking stations from time to time to such persons or corporations on such terms as the commissioners court shall deem appropriate.
- SECTION 9. Section 2, Chapter 834, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372cc, Vernon's Texas Civil Statutes), is amended to read as follows:
- Sec. 2. PROHIBITION. In a county with a population of more than $\underline{2.5}$ million [1,700,000], according to the most recent federal census, a person may not

place a sign on a public road right-of-way unless the placement is authorized by state law.

SECTION 10. Section 1, Chapter 511, Acts of the 58th Legislature, Regular Session, 1963 (Article 2676a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. From and after the effective date of this Act in any county in this State having a population of not less than 191,500 [one hundred thousand (100,000)] and not more than 200,000 [one hundred twenty thousand (120,000)], according to the last preceding federal census, the general management and control of the public free schools and high schools in each county unless otherwise provided by law shall be vested in five (5) county school trustees elected from the county, one of whom shall be elected from the county at large by the qualified voters of the county and one from each commissioners precinct by the qualified voters of each commissioners precinct, who shall hold office for a term of two (2) years. The time for such election shall be the first Saturday in April of each year; the order for the election of county school trustees to be made by the County Judge at least thirty (30) days prior to the date of said election, and which order shall designate as voting places or places at which votes are cast for the district trustees of said common and independent school districts, respectively. The election officers appointed to hold the election for district trustees in each of said school districts, respectively, shall hold this election for county school trustees.

SECTION 11. Section 1, Chapter 233, Acts of the 59th Legislature, Regular Session, 1965 (Article 2676b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies to a county-wide school district in a county having a population of more than 5,100 [5,150] and less than 5,125 [5,175] according to the last preceding federal census. The Board of Trustees may order that the trustees of the district shall run at large in the county. If the Board orders that its members shall run at large, each position shall be filled by election from the county at large upon expiration of the current term of office.

SECTION 12. Section 1(b), Chapter 63, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 2688h, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) From and after May 1, 1962, the office of the county board of school trustees and the office of county superintendent shall cease to exist in any county in this State having a population of not less than 200,000 [one hundred ninety thousand (190,000)] and not more than 220,000 [two hundred five thousand (205,000)] according to the last preceding federal census which has no common school district and whose county ad valorem evaluation is in excess of Two Hundred Fifty Million Dollars (\$250,000,000); provided, however, that the county superintendents in such counties who have been heretofore elected or appointed to the office of county superintendent shall serve until the expiration of the term for which they were elected or appointed. The duties now performed by the board of school trustees and county superintendents in such counties shall be performed by the County Judges of such counties.

SECTION 13. Sections 5 and 6, Chapter 706, Acts of the 59th Legislature, Regular Session, 1965 (Article 2688i-1, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 5. The provisions of this Act shall not apply to counties having a population of not less than 5,000 [4,600] and not more than 5,120 [4,690] and to counties having a population of not less than 36,350 [18,093] and not more than 36,500 [18,099] according to the last preceding federal census.

Sec. 6. No county having a population of more than 25,100 [22,720] and less than 25,500 [23,000] according to the last preceding federal census, shall have the

offices of county school superintendent, ex officio county school superintendent, and county board of education.

All duties and functions, except as hereafter provided, that are otherwise required by law of the office of county school superintendent or ex officio county school superintendent governed by this section shall be performed by the superintendents of the independent and rural high school districts, and all duties that may otherwise be required by law of the county board of education governed by this section shall be performed by the elected Board of Trustees of such independent and rural high school districts, except that the County Judge shall, without pay from the State of Texas, continue to approve or disapprove application for school transfers. The Commissioners Court of such county shall hereafter receive, hear and pass upon all petitions for the calling of elections for the creation, change or abolishment of county school districts and all authorized appeals from the independent school Board of Trustees shall be made directly to the State Board of Education or to the courts as provided by law.

All school records of the original independent and/or common school district governed by this section, shall be transferred to the control and custody of the independent school district office, located at the county seat, save and except the original financial records which shall be retained by the county treasurer, and thereafter the County Judge shall be required to make no records or reports but said reports shall be made by the superintendent of such independent or rural school district; that as soon as practicable after the effective date of this Act, all remaining State funds in the hands of the county board of education shall be transferred by the county treasurer and the County Judge to the independent and rural high school districts in proportion to the number of scholastics enrolled in such districts.

SECTION 14. Section 1, Chapter 35, Acts of the 58th Legislature, Regular Session, 1963 (Article 2766c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. In all counties in this State having a population of not less than 39,950 [40,000] and not more than 40,000 [40,500], according to the last preceding federal census, the territory of any independent school district therein having an assessed valuation of more than \$15 million or having an assessed valuation of less than \$14 million but more than \$2 million shall not be changed without the consent of its Board of Trustees. Such consent shall be evidenced by an appropriate resolution of the Board of Trustees of such district properly certified by its secretary, and filed with the County Clerk of the county in which such school district is situated. Such resolution shall be recorded in the "Record of School Districts," or in the Deed Records of said county, as may be appropriate.

SECTION 15. Section 1, Chapter 39, Acts of the 59th Legislature, Regular Session, 1965 (Article 2774c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 1. An independent school district may adopt the provisions of this Act if it
 - (1) has converted from a common school district;
- (2) had more than 120 scholastics in daily attendance at the time of conversion;
- (3) is located in a county with a population of more than $\underline{100,000}$ [99,400] but less than $\underline{105,000}$ [100,000] persons or in a county with a population of more than $\underline{22,034}$ [20,500] but less than $\underline{22,600}$ [21,000] persons.

SECTION 16. Section 1, Chapter 233, Acts of the 58th Legislature, Regular Session, 1963 (Article 2775a-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act shall apply to all independent school districts which are situated in counties having a population of more than 6,500 [six thousand, six

hundred fifty (6,650)] but less than 6,600 [six thousand, eight hundred (6,800)], according to the last preceding federal census, and having a district valuation of not less than Twenty-five Million Dollars (\$25,000,000), according to the last preceding valuation and to all independent school districts which are situated in counties having a population of more than 14,325 [thirteen thousand, three hundred (13,300)] but less than 14,345 [thirteen thousand, three hundred fifty (13,350)], according to the last preceding federal census, and having a district valuation of not less than One Hundred Thirty Million Dollars (\$130,000,000).

SECTION 17. Section 1, Chapter 452, Acts of the 59th Legislature, Regular Session, 1965 (Article 2775a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The Board of Trustees of an independent school district in a county having a population larger than 18,800 [13,550] but smaller than 18,840 [13,590] according to the last preceding federal census, may order that each trustee position be designated by number and that each candidate be designated on the official ballot by the number of the position sought.

SECTION 18. Section 1, Chapter 652, Acts of the 59th Legislature, Regular Session, 1965 (Article 2775a-6, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The Board of Trustees of an independent school district in a county having a population larger than 50,000 [41,500] but smaller than 51,000 [42,000] according to the last preceding federal census, may order that each trustee position be designated by number and that each candidate be designated on the official ballot by the number of the position sought.

SECTION 19. Section 1, Chapter 702, Acts of the 59th Legislature, Regular Session, 1965 (Article 2775a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act shall apply to any independent school district having an assessed valuation of less than \$4,125,000 located in any county having a population of not less than 122,000 [121,000] and not more than 132,000 [128,000] according to the last preceding federal census.

SECTION 20. Section 1, Chapter 351, Acts of the 60th Legislature, Regular Session, 1967 (Article 2775a-8, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies to all independent school districts, whether created by general law or special act, in counties having a population of more than 200,000 [190,000] and less than 220,000 [205,000] according to the last preceding federal census; provided, however, that this Act does not apply to any district unless and until the Board of Trustees thereof adopts by majority vote an order or resolution adopting the provisions thereof. The Board of Trustees of an independent district may adopt an order or resolution adopting all or any one or more of the provisions hereof, then thereafter for a period of three successive years all trustee elections in such district shall be held and governed by the terms and provisions thereof.

SECTION 21. Section 1, Chapter 23, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 2775e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. In all counties with a population of not less than 191,500 [one hundred sixty thousand (160,000)] and not more than 200,000 [one hundred seventy thousand (170,000)], according to the last preceding federal census, where two independent school districts of more than five hundred (500) scholastics have been consolidated, the seven (7) member Board of Trustees of said consolidated district as provided by law shall be elected by position.

Candidates for Positions 1, 3, and 5 shall be residents of an area of which was at the time of consolidation, a part of the larger district and candidates for Positions

2 and 4 shall be residents of an area which was at the time of consolidation a part of the smaller district. Candidates for Position 6 and 7 may live in any area of the consolidated district.

Terms of office for Positions 1 and 2 of said Board shall apply to those trustees elected in 1961, and their successors in office, terms of office for Positions 3 and 4 would apply to those trustees elected in 1962, and their successors in office and terms of office for Positions 5, 6, and 7 would apply to those trustees elected in 1963, and their successors in office.

The Board of Trustees of such consolidated district, shall at the next meeting after the effective date of this Act, designate in the minutes of said meeting the names of Board members who then fill each of said positions.

Nothing herein contained is to conflict with the powers, duties, terms of office and responsibilities of trustees of independent school districts.

SECTION 22. Section 1, Chapter 9, Acts of the 61st Legislature, Regular Session, 1969 (Article 2775e-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies to consolidated independent school districts in any county having a population of not less than 18,200 [18,750] nor more than 18,400 [18,830] according to the last preceding federal census.

SECTION 23. Section 1, Chapter 443, Acts of the 61st Legislature, Regular Session, 1969 (Article 2775e-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The Board of Trustees of an independent school district in a county having a population of more than 8,200 [8,300] but less than 8,400 [8,600], or more than 9,900 [9,100] but less than 9,975 [9,280], according to the last preceding federal census, and having a total assessed property valuation of more than \$50 million within the county, shall order that each trustee position be designated by number and that each candidate be designated on the official ballot by the number of the position sought.

SECTION 24. Section 1, Chapter 324, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2775e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies to all independent school districts which are located in a county having a population of not less than 34,675 [26,500] nor more than 36,000 [27,000], according to the last preceding federal census, which have a gross average daily attendance of 1,000 or more for the preceding school year, and which do not contain within the district the county seat of the county. However, this Act does not apply to any district unless and until the board of trustees adopts by majority vote an order or resolution adopting the provisions of this Act. The board of trustees of an independent district may adopt an order or resolution adopting all or any one or more of the provisions of this Act, then thereafter for a period of three successive years all trustee elections in that district shall be held and governed by the terms and provisions of this Act.

SECTION 25. Section 1, Chapter 36, Acts of the 59th Legislature, Regular Session, 1965 (Article 2775f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies to each independent school district created under general or special law:

(1) if the largest portion of the area of the school district is inside the boundaries of a county having a population of more than $\frac{72,000}{68,000}$ and less than $\frac{78,000}{70,000}$, according to the last preceding federal census; and

(2) if the district has, until March 18, 1965, elected four trustees for two-year terms in even-numbered years, and elected three trustees for two-year terms in odd-numbered years.

SECTION 26. Section 1, Chapter 34, Acts of the 60th Legislature, Regular Session, 1967 (Article 2775f-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies to each independent school district, created under general or special law,

(1) if the largest portion of the area of the school district is inside the boundaries of a county having a population of more than 185,000 [170,000] and less than 190,000, according to the last preceding federal census; and

(2) if the district has, until August 28, 1967, elected four trustees for two-year terms in even-numbered years, and elected three trustees for two-year terms in odd-numbered years.

SECTION 27. Section 1, Chapter 178, Acts of the 59th Legislature, Regular Session, 1965 (Article 2777d-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act applies in all independent school districts in counties which contain a population of not less than 1,440 [1,250] nor more than 1,500 [1,350] according to the last preceding federal census, where heretofore four trustees were elected for two-year terms on the first Saturday in April in even-numbered years and three trustees were elected for two-year terms in odd-numbered years.

SECTION 28. Section 1, Chapter 531, Acts of the 57th Legislature, Regular Session, 1961 (Article 2777f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act shall apply in all independent school districts, whether created under the General Laws or by special Act of the Legislature and having a board of seven (7) trustees and where the greatest geographic portion of any such independent school district is situated within the boundaries of a city having a population in excess of 8,225 [eight thousand, three hundred twenty-five (8,325)] and not more than 8,300 [eight thousand, three hundred seventy-five (8,375)], as shown by the last preceding federal census, and where before August 28, 1961, four (4) trustees were elected for two (2) year terms on the first Saturday in April in even-numbered years and three (3) trustees were elected for two (2) year terms in odd-numbered years.

SECTION 29. Section 1, Chapter 98, Acts of the 58th Legislature, Regular Session, 1963 (Article 2784e-6, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The Commissioners Court for any common or independent school district having a scholastic population of five hundred (500) or less, according to the last preceding scholastic census, and lying with a county having a population of 58,000 [forty-two thousand, five hundred (42,500)] or more but less than 58,700 [forty-three thousand, five hundred (43,500)], according to the last preceding federal census, may levy and cause to be collected a tax, in addition to that authorized under Section 1, Chapter 304, Acts of the 49th Legislature, 1945, as amended (compiled as Article 2784e of Vernon's Annotated Revised Civil Statutes), not to exceed twenty-five cents (25¢) on the One Hundred Dollar (\$100) valuation of taxable property of the district for the maintenance and use of the schools therein. The limitation imposed by Subsection 3, Section 1, Chapter 304, Acts of the 49th Legislature, 1945, as amended (compiled as Section 3, Article 2784e of Vernon's Annotated Revised Civil Statutes of Texas), shall not apply to the additional tax provided for in this section and the tax provided for in this section shall be in addition to that limit.

SECTION 30. Section 1, Chapter 229, Acts of the 61st Legislature, Regular Session, 1969 (Article 2784e-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The Board of Trustees of any school district in any county having a population of not less than 28,500 [25,200] nor more than 28,900 [26,000],

according to the last preceding federal census, may levy and collect a tax, not to exceed \$2.50 per \$100 of valuation of taxable property, for the maintenance and use of the schools in the district.

SECTION 31. Section 1(a), Chapter 144, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2784e-13, Vernon's Texas Civil Statutes), is

amended to read as follows:

(a) The board of trustees of any independent school district having a gross average daily attendance of less than 2,000 students for the preceding school year and located wholly or partly in a county having a population of not less than 12,900 [12,500] nor more than 13,000 [12,600], according to the last preceding federal census, may levy and collect a tax, in addition to that authorized under Sections 20.01 through 20.04, Texas Education Code, not to exceed 75 cents on the \$100 valuation of all taxable property situated within the district and subject to district taxation for the maintenance and use of the schools in the district.

SECTION 32. Section 1(a), Chapter 724, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2784e-17, Vernon's Texas Civil Statutes), is

amended to read as follows:

(a) The board of trustees of any school district located in a county having a population of not less than 17,000 [13,450] nor more than 17,204 [13,550], according to the last preceding federal census, may levy and collect a tax, in addition to that authorized under Sections 20.01 through 20.04, Texas Education Code, not to exceed \$1 on the \$100 valuation of taxable property for the district for the maintenance and use of the schools in the district.

SECTION 33. Section 1, Chapter 308, Acts of the 58th Legislature, Regular Session, 1963 (Article 2784g-1, Vernon's Texas Civil Statutes), is amended to read

as follows:

Sec. 1. Any independent school district having an assessed valuation for school tax purposes of Twenty Million Dollars (\$20,000,000) or more but less than Thirty-five Million Dollars (\$35,000,000), and lying within a county having a population of 191,500 [one hundred sixty thousand (160,000)] or more but less than 200,000 [one hundred seventy thousand (170,000)], according to the last preceding federal census, shall have the power, when authorized by an election held for that purpose, to levy, assess and collect an ad valorem tax not to exceed Two Dollars (\$2) per One Hundred Dollar (\$100) valuation of all taxable property located in such school district or having its taxable situs therein in order to pay the current interest and maturities of bonds issued and to be issued by the district and for the further maintenance of the public free schools therein.

SECTION 34. Section 1, Chapter 82, Acts of the 59th Legislature, Regular Session, 1965 (Article 2790d-10, Vernon's Texas Civil Statutes), is amended to read

as follows:

Sec. 1. This Act shall apply to all independent school districts in counties having a population of not more than 5,200 [5,400] and not less than 5,125 [5,330] according to the last preceding federal census and having an approved tax roll assessment for the school year of 1964-65 of not less than \$23,000,000.00 and not more than \$24,500,000.00. If during the scholastic year the Board of Trustees of any such independent school district determines that there will be insufficient funds to properly maintain and operate the school in said district during the remainder of such scholastic year, said Board is hereby authorized to issue time warrants for the purpose of obtaining funds with which to maintain and operate the schools in said district during the remainder of such scholastic year. Said Board shall authorize the issuance of said time warrants by appropriate order and a tax shall be levied for the payment of the interest on and principal of such warrants. Said order shall further create an interest and sinking fund into which there shall be deposited, out of each year's taxes while said warrants are unpaid and in existence, a sufficient amount of

money to pay the principal and interest on said warrants when the same becomes due and payable. Said warrants shall be payable serially and annually for a period of years not to exceed eight (8), and shall bear interest at a rate not to exceed five percent (5%) per annum. Nothing herein shall prevent the Board from paying the interest on said warrants semi-annually if it so desires. Said warrants shall be signed by the president of the Board of Trustees and countersigned by the secretary; provided, however, that their facsimile signatures may be printed or lithographed on any coupon, if any, attached to said warrants. Said warrants shall not be sold for less than par and accrued interest. Monies placed in said interest and sinking fund shall be paid out only to pay the interest and principal requirements on said warrants. However the aggregate amount of time warrants that may be issued in any one scholastic year shall not exceed \$175,000.00.

SECTION 35. Section 1(a), Chapter 65, Acts of the 60th Legislature, Regular Session, 1967 (Article 2790d-12, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act applies in independent school districts with an assessed valuation of not less than \$16 million nor more than \$18 million, in counties with a population of not less than 4,300 [4,700] nor more than 4,380 [4,830] according to the last preceding federal census.

SECTION 36. Section 1(a), Chapter 53, Acts of the 61st Legislature, Regular Session, 1969 (Article 2790d-13, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act applies to independent school districts with assessed valuations of \$10 million or more in counties with a population of not less than 13,600 [12,300] nor more than 14,000 [12,500] according to the last preceding federal census.

SECTION 37. Section 1, Chapter 575, Acts of the 61st Legislature, Regular Session, 1969 (Article 2790d-15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act shall apply to all independent school districts situated in counties having a population of not less than 18,830 [18,900] and not more than 19,000 and containing a city within such district boundaries having a population of not less than 2,207 [2,495] and not more than 2,210 [2,500] according to the last preceding federal census, and having an approved tax roll assessment for said school district for the year 1968 of not less than \$12,500,000 and not more than \$14,375,000, and having a scholastic population of not less than 750 and not more than 850. If during the scholastic year the Board of Trustees of any such independent school district determines a need to repair or renovate school buildings; purchase school buildings; cause to be constructed new school buildings; purchase school furniture, furnishings, or equipment; equip school properties with necessary heating, water, sanitation, lunchroom, and electrical facilities; and said school district is financially unable out of available funds to make such repairs, renovations, purchases, or equip such school properties with said facilities, said Board is hereby authorized to issue time warrants for the purpose of obtaining funds with which to repair or renovate school buildings; purchase school buildings; cause to be constructed new school buildings; purchase school furniture, furnishings, or equipment; equip school properties with necessary heating, water, sanitation, lunchroom, and electrical facilities. Said Board shall authorize the issuance of said time warrants by appropriate order which order shall further create an interest and sinking fund into which there shall be deposited, out of each year's taxes while said warrants are unpaid and in existence, a sufficient amount of money to pay the principal and interest on said warrants when the same become due and payable, and a tax, within the limits otherwise provided by law, shall be levied for the payment of the interest on and principal of such warrants. Said warrants shall be payable serially and annually for a period of years not to exceed five (5) and shall bear

interest at a rate not to exceed six percent (6%) per annum, with the option to call any part of all of said warrants for payment on any interest installment or paying date, and may provide for the payment of interest on a quarterly or semiannual basis. Said warrants shall be signed by the president of the Board of Trustees and countersigned by the secretary; provided, however, that their facsimile signatures may be printed or lithographed on any coupon, if any, attached to said warrants. Said warrants shall not be sold for less than par and accrued interest. Moneys placed in said interest and sinking fund shall be paid out only to pay the interest and principal requirements on said warrants. The aggregate amount of time warrants that may be outstanding as to unpaid principal shall never exceed \$80,000.

SECTION 38. Section 1(a), Chapter 828, Acts of the 61st Legislature, Regular Session, 1969 (Article 2790d-16, Vernon's Texas Civil Statutes), is amended to read

as follows:

(a) This Act applies to independent school districts, located partly in three (3) or more counties, the supervision of said schools being located in counties having a population of not less than 6,900 [7,300] nor more than 7,000 [7,500] as shown by the last preceding federal census.

SECTION 39. Section 1(a), Chapter 46, Acts of the 61st Legislature, 2nd Called Session, 1969 (Article 2790d-17, Vernon's Texas Civil Statutes), is amended

to read as follows:

(a) This Act applies to any independent school district having within its district boundaries a city having a population of not less than 14,825 [9,275] nor more than 14,850 [9,475] according to the last preceding federal census.

SECTION 40. Section 1(a), Chapter 927, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2790d-19, Vernon's Texas Civil Statutes), is

amended to read as follows:

(a) This Act applies to any independent school district within the State of Texas, whether created by general law or special Act of the Legislature, which is entitled on January 1, 1971, to payments for maintenance and operation of schools under the Act of September 30, 1950, 64 United States Statutes at Large 1100, Public Law 874 (81st Congress) as amended, and which has within or partly within its district boundaries a city having a population of not less than 500,000 [400,000] and not more than 700,000 [600,000] according to the last preceding Federal Census.

SECTION 41. Section 1(a), Chapter 312, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2803e, Vernon's Texas Civil Statutes), is amended

to read as follows:

(a) This Act applies to independent school districts, located partly in three or more counties, the supervisory office for those schools being located in counties having a population of not less than 6,900 [7,300] nor more than 7,000 [7,500] as shown by and according to the last preceding Federal Census.

SECTION 42. Section 1, Chapter 68, Acts of the 59th Legislature, Regular Session, 1965 (Article 2827d, Vernon's Texas Civil Statutes), is amended to read

as follows:

Sec. 1. In addition to all other powers granted or authorized by law, the Board of Trustees of any independent school district located in a county having a population of between 1.18 million [nine hundred thousand (900,000)] and 1.5 million [one million (1,000,000)] according to the last preceding federal census shall have power and authority to make expenditures from local school funds of the district for the purpose of obtaining evaluation, counseling and/or treatment of emotionally disturbed children. The words "emotionally disturbed children" as used in this article will be construed to include any child of educable mind whose ineffective adjustment to life's problems has resulted in abnormal behavior and/or learning capacity so impaired as: to prevent the adequate and full education of such child; to burden the teacher of such child with unusual disciplinary, administrative,

or educational duties; or to create physical, educational or emotional dangers for the pupils associated with such child. The Board of Trustees shall have power and authority to make such expenditures for salaries of doctors, counselors and/or therapists employed by the school system and/or for services rendered by nonprofit corporations on any basis determined to be appropriate by such Board of Trustees.

SECTION 43. Section 1, Chapter 7, Acts of the 58th Legislature, Regular Session, 1963 (Article 2922l(3.1), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act shall apply only to rural high school districts and consolidated independent school districts composed of the territory formerly comprising ten (10) original school districts, one of which shall have been an independent district, each original school district having a scholastic population of less than two hundred (200), in counties with a total population of not less than 225,000 [one hundred thirty thousand (130,000)] and not more than 235,000 [one hundred forty thousand (140,000)], according to the last preceding federal census.

It is immaterial whether such rural high school district or consolidated independent school district shall have been established, or shall be established, by consolidation, or by annexation, or by grouping the original school districts.

SECTION 44. Section 2, Chapter 916, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4477-1a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PROHIBITION. No municipal corporation with a population of not less than 600,000 nor more than 950,000 [900,000] according to the last preceding Federal census, may discharge any municipal sewage into any open pond, the surface area of which pond covers more than 100 acres, if the discharge will cause or result in a nuisance. The Texas Water Quality Board, acting with the Texas Air Control Board and the Texas State Department of Health, shall make periodic inspections of such ponds as necessary, but at least once every year, and shall ascertain whether such pond is causing or will cause or result in a nuisance.

If the Texas Water Quality Board, acting in accord with the Texas Air Control Board and the Texas State Department of Health, shall ascertain that the maintenance of such pond creates or continues a nuisance, it shall advise the municipal corporation making such discharge and shall allow such municipal corporation adequate time to abate such nuisance.

SECTION 45. Section 3(a), Chapter 916, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4477-1a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any municipal corporation with a population of not less than 600,000 nor more than 950,000 [900,000] which fails to abate a nuisance pursuant to a directive of the Texas Water Quality Board as provided in Section 2 above, within a reasonable time after notification of such failure by the Texas Water Quality Board, shall be liable to a civil penalty of not more than \$1,000 a day for each day that it maintains such a nuisance.

SECTION 46. Section 1(a), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In all incorporated cities and towns containing more than 500,000 [four hundred thousand (400,000)] inhabitants and less than [six hundred thousand (]600,000[)] inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund,

SECTION 47. Section 2(a), Chapter 183, Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A fire fighter's relief and retirement fund is created in all incorporated cities having a population of not less than 450,000 [300,000] nor more than 500,000 [375,000], according to the last preceding federal census, and having a fully paid fire department.

SECTION 48. Section 1, Chapter 105, Acts of the 47th Legislature, Regular Session, 1941 (Article 6243f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. In all incorporated cities containing more than 750,000 [five hundred thousand (500,000)] inhabitants and less than 950,000 [eight hundred thousand (800,000)] inhabitants according to the last preceding federal census or any future federal census and having a fully paid fire and police department, there is created hereby (and continued if heretofore created) a Firemen and Policemen's Pension Fund; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any such member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population (as herein prescribed) and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population. To govern said Firemen and Policemen's Pension Fund, there is hereby created a Board of Trustees to consist of seven (7) members, as follows: the mayor, two (2) aldermen, councilmen or commissioners, each to serve on this Board for the term of office to which they are elected, and to be elected to this Board by majority vote of the Board of Aldermen, Council or Board of Commissioners on which they serve; two (2) active firemen below the rank of fire chief, to be selected by the majority vote of the members of the fire department by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years, and two (2) active policemen below the grade of police chief, to be selected by the majority vote of the members of the police department, by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years. All members from the fire and police departments shall be elected by the contributors to the Fund, and shall serve until their successors are elected and qualified and their successors shall be elected for a term of four (4) years. These seven (7) trustees and their successors shall constitute the Board of Trustees of the Firemen and Policemen's Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof, and to have complete and independent control over said Pension Fund. Said Board shall be known as the Firemen and Policemen's Pension Fund Board of Trustees of , Texas.

SECTION 49. Section 1, Chapter 103, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6243f-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. No member of a fire department in any city or town in this State having a population of not less than 400,000 [350,000] nor more than 450,000 [400,000], according to the last preceding federal census, shall be involuntarily retired prior to reaching the mandatory retirement age set for such cities' employees unless he is physically unable to perform his duties. In the event he is physically unable to perform his duties, he shall be allowed to use all of his accumulated sick leave, before retirement.

SECTION 50. Section 6(a), Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Commencing with the first day of the month following the expiration of thirty (30) days after the passage of this Act or after the date of publication of the final census report which shows that the city has attained a population of 1,200,000 [nine hundred thousand (900,000)] or more inhabitants, each member of the Pension Fund shall pay into such Fund each month, the sum of five percent (5%) of the base salary provided for the classified position in the police department held by the member. Such payments shall be deducted by the city from the salary of each member monthly and paid to the treasurer of the Pension Fund. Should an emergency arise and the Pension Board deem it necessary for the welfare of the Pension System, the Board may raise the monthly payments of each member of the Pension System to an amount not to exceed ten percent (10%) of the base salary provided for the classified position in the police department held by the member.

SECTION 51. Section 16(a), Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 6674v-3, Vernon's Texas Civil Statutes), is amended to read as follows:

- (a) The regulations imposed by or adopted under the other sections of this article do not apply to off-premise portable signs in the unincorporated area of a county with a population of 2.4 [1.7] million or more, according to the most recent federal census. In such a county, the commissioners court may prohibit off-premise portable signs in the unincorporated area of the county and may regulate the following matters in that area:
- (1) the location, height, size, and anchoring of off-premise portable signs; and
- (2) other matters relating to the use of off-premise portable signs. SECTION 52. Section 2.411, Chapter 288, Acts of the 68th Legislature, Regular Session, 1983 (Article 6702-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.411. COUNTY SUBJECT TO SUBCHAPTER. This subchapter applies only to a county with a population of 1.18 million [950,000] or more, according to the most recent federal census.

SECTION 53. Section 1, Chapter 809, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6812b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The commissioners court of any county having a population of not less than 160,000 [128,400] nor more than 185,000 [130,000], according to the last preceding federal census, may appoint a county engineer, but the selection shall be controlled by considerations of skill and ability for the task. The engineer may be selected at any regular meeting of the commissioners court, or at any special meeting called for that purpose. The engineer selected shall be a Registered Professional Engineer in the State of Texas. The engineer shall hold his office for a period of two years, his term of office expiring concurrently with the terms of other

county officers, and he may be removed at the pleasure of the commissioners court. The engineer shall receive a salary to be fixed by the commissioners court not to exceed the amount of the salary paid to the highest county official, to be paid out of the Road and Bridge Fund. The engineer, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall execute a bond in the sum of \$15,000 with a good and sufficient surety or sureties thereon, payable to the county judge of the county and successors in office in trust, for the use and the benefit of the Road and Bridge Fund, of the county to be approved by the court, conditioned that such engineer will faithfully and efficiently discharge and perform all of the duties required of him by law and by the orders of said commissioners court and shall faithfully and honestly and in due time account for all of the money, property and materials placed in his custody.

SECTION 54. Section 9, Chapter 201, Acts of the 51st Legislature, Regular Session, 1949 (Article 8161d, Vernon's Texas Civil Statutes), is amended to read

as follows:

Sec. 9. The provisions of this Act shall apply only to counties having a population of not less than 191,500 [160,000] nor more than 200,000 [170,000], according to the last preceding federal census.

SECTION 55. Section 147.003(a), Agriculture Code, is amended to read as

follows:

(a) A person pursuing the business of selling mules, horses, jacks, or jennets in a county with a population of not less than <u>one million [710,000]</u> nor more than 1.18 million [720,000] is not subject to this chapter as a livestock auction commission merchant.

SECTION 56. Section 106.001(c)(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) Neither this section nor any home-rule charter or general law may be construed to prevent a home-rule municipality with a population of one million [900,000] or more according to the most recent federal census from adopting a program or programs designed to reasonably increase participation by minority business enterprises in public contract awards. If, as part of a program described by this subdivision, the governing body of such a municipality establishes a goal of having a certain percentage of its public contract awards made to minority business enterprises, the governing body shall use a qualified independent source to establish to what extent minority business enterprises in the municipality are available to receive awards for each of the various kinds of construction of public contracts that will be awarded. The percentage goal shall not exceed the availability of minority business enterprises in the municipality as determined by the independent source.

SECTION 57. Article 2.12, Code of Criminal Procedure, as amended by Chapters 277, 794, and 1104, Acts of the 71st Legislature, Regular Session, 1989,

is amended to read as follows:

- Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:
 - (1) sheriffs and their deputies;
 - (2) constables and deputy constables;
 - (3) marshals or police officers of an incorporated city, town, or village;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
 - (6) law enforcement agents of the Alcoholic Beverage Commission;
 - (7) each member of an arson investigating unit of a city, county or the

state;

(8) any private person specially appointed to execute criminal process;

- (9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute:
- (10) officers commissioned by the State Purchasing and General Services Commission;
- (11) law enforcement officers commissioned by the Parks and Wildlife Commission;
- (12) airport police officers commissioned by a city with a population of more than one million [900,000], according to the most recent federal census, that operates an airport that serves commercial air carriers;
- (13) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (12), that operates an airport that serves commercial air carriers;
 - (14) municipal park and recreational patrolmen and security officers;
- (15) security officers commissioned as peace officers by the State Treasurer;
- (16) officers commissioned by a water control and improvement district under Section 51.132, Water Code;
- (17) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);
- (18) investigators commissioned by the Texas State Board of Medical Examiners;
- (19) officers commissioned by the board of managers of the Dallas County Hospital District under Section 281.057, Health and Safety Code [Section 16, Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4494n, Vernon's Texas Civil Statutes)];
- (20) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;
 - (21) stewards and judges employed by the Texas Racing Commission;
 - (22) officers commissioned by the Texas State Board of Pharmacy;

[and]

- (23) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 13, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), or by a regional transportation authority under Section 10, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes); and[:]
- (24) [(23)] officers commissioned by the Texas High-Speed Rail Authority.
- SECTION 58. Section 1, Article 49.25, Code of Criminal Procedure, is amended to read as follows:
- Sec. 1. Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than one million [500,000] and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.
- SECTION 59. Section 20.48(e), Education Code, is amended to read as follows:
- (e) The governing body of an independent school district that governs a junior college district under Subchapter B, Chapter 130, of this code in a county with a population of more than 1.5 million [one million] may dedicate a specific

percentage of the local tax levy to the use of the junior college district for facilities and equipment or for the maintenance and operating expenses of the junior college district. To be effective, the dedication must be made by the governing body on or before the date on which the governing body adopts its tax rate for a year. The amount of local tax funds derived from the percentage of the local tax levy dedicated to a junior college district from a tax levy may not exceed the amount that would be levied by five percent of the effective tax rate for the tax year calculated as provided by Section 26.04, Tax Code, on all property taxable by the school district. All real property purchased with these funds is the property of the school district, but is subject to the exclusive control of the governing body of the junior college district for as long as the junior college district uses the property for educational purposes.

SECTION 60. Section 23.08(a), Education Code, is amended to read as follows:

(a) Elections for trustees of independent school districts shall be held on the first Saturday in April, except that in counties having a population of <u>one million</u> [500,000] or more the trustees may by official resolution select any other Saturday.

SECTION 61. Section 130.073(a), Education Code, is amended to read as follows:

(a) A junior college district that is located in part of a county with a population of more than 1.18 million [900,000] residents may annex the territory included in the county that is not included in the district or another junior college district. SECTION 62. Section 130.073(k), Education Code, is amended to read as

follows:

(k) In a junior college district expanded to a countywide district with a population of more than 1.18 million [900,000] residents according to the last preceding decennial census, members of the governing board shall be elected from single-member trustee districts. If members of the governing board of a junior college district subject to this subsection are not already elected from single-member trustee districts, the members shall be elected as provided by this subsection. The governing board of the district shall divide the junior college district into nine single-member trustee districts that are compact and contiguous, and that contain as nearly as practicable an equal number of residents according to the last preceding decennial census. The trustee district positions shall be filled as the staggered terms of incumbent trustees expire, with the first trustees from single-member districts being elected at the first regular trustee election held in a year following the year in which the district became countywide. If an incumbent trustee is a vacancy appointee serving until the next regular election, that position shall also be filled from a trustee district for an appropriately shortened term at that election. If before that election the district was governed by seven trustees, the district shall also elect two additional trustees from trustee districts at that election. The initial terms of the additional trustees shall be for the periods necessary to comply with Section 130.082(e) of this code. The board shall complete the drawing of the single-member district boundaries, and shall determine by lot the order in which the trustee district positions will be filled, not later than the 90th day before the date of that election. Trustees elected under this subsection are elected by the qualified voters of the trustee district the trustee represents. A candidate seeking to represent a trustee district must be a resident of that trustee district and vacates the office if he ceases to reside in that district. A person appointed to fill a vacancy must be a resident of the trustee district he is appointed to represent. Not later than the 90th day before the day of the first election following the date on which the district may officially take notice of the federal census, the board of a district electing trustees under this subsection shall redivide the district into nine trustee districts if the census data indicate that the population of the most populous district exceeds the population of the least populous district by more than 10 percent. If after redistricting only one incumbent trustee resides in a new district, the trustee serves the new district for the remainder of the term to which he was elected. If after redistricting no incumbent or more than one incumbent resides in a new district, the office for trustee of that district becomes vacant, and the vacancy shall be filled in the same manner as other vacancies on the board.

SECTION 63. Section 130.082(i), Education Code, is amended to read as follows:

(i) The election of trustees of a countywide junior or community college district that contains a city with a population of more than one million [800,000] residents shall be held on the first Saturday in April of each even-numbered year. When a runoff election is necessary, the board may order the election for a date to coincide with the date of the runoff election for city officials, if the city is holding a runoff election; otherwise, the board shall set the date of the runoff election for not later than three weeks following the regular election.

SECTION 64. Section 130.0821(a), Education Code, is amended to read as follows:

(a) The members of the governing board of a countywide community college district that contains a city with a population of more than <u>one million [800,000]</u> residents shall be elected from single-member trustee districts at all elections held after January 1, 1978.

SECTION 65. Section 42.036(a), Election Code, is amended to read as follows:

(a) This section applies only to a county with a population of <u>one million</u> [500,000] or more.

SECTION 66. Section 143.005(e), Election Code, is amended to read as follows:

(e) If the city charter of a home-rule city with a population of more than <u>one million</u> [900,000] that holds nonpartisan elections for its offices requires both a petition and a \$50 fee to be filed for a candidate's name to be placed on the ballot, those requirements supersede this section.

SECTION 67. Section 71.09(d), Family Code, is amended to read as follows:

(d) A prosecuting attorney in a county with a population of more than 1.5 million [1,000,000] may request that a hearing under Subsection (a) of this section take place not later than 20 days after the date the application is filed or that a hearing rescheduled under Subsection (c) of this section take place not later than 20 days after the date on which the request is made. The prosecuting attorney may make a request under this subsection on a case-by-case basis or to all the courts in the county for all cases under this chapter. A court shall grant the request of a prosecuting attorney under this subsection.

SECTION 68. Section 25.0024(a), Government Code, is amended to read as follows:

(a) A judge of a statutory probate court in a county with a population of <u>one million</u> [500,000] or more may hire with the approval of the commissioners court through the county budget process a court coordinator, an administrative assistant, and an auditor for the court.

SECTION 69. Section 51.501(c), Government Code, is amended to read as follows:

(c) The commissioners court of a county that has a population of 6,800 [7,601] to 6,900 [7,999] shall determine whether the county shall have a joint clerk but may not take action to prevent a district clerk, county clerk, or joint clerk from serving the full term of office to which the clerk was elected.

SECTION 70. Section 62.021, Government Code, is amended to read as follows:

Sec. 62.021. DISMISSAL OF JUROR REMOVED FROM PANEL. In a county with a population of 1.5 million [1,100,000] or more, a prospective juror removed from a jury panel for cause, by peremptory challenge or for any other reason, must be dismissed from jury service. After dismissal, the person may not be placed on another jury panel until his name is returned to the jury wheel and drawn again for jury service.

SECTION 71. Section 263.025, Health and Safety Code, is amended to read

as follows:

Sec. 263.025. HOSPITAL OPERATING FUNDS USED FOR IMPROVEMENTS IN COUNTIES OF 22,000 TO 22,034 [23,000 to 23,100]. The commissioners court of a county with a population of 22,000 to 22,034 [23,000 to 23,100] may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of a county hospital facility.

SECTION 72. Section 281.021(b), Health and Safety Code, is amended to

read as follows:

- (b) The commissioners court of a county with a population of more than 650,000 but less than 1.18 million [900,000] in which a district is created under this chapter shall appoint a board composed of not less than five or more than 15 members.
- SECTION 73. Section 285.002, Health and Safety Code, is amended to read as follows:
- Sec. 285.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county having:
 - (1) a population of at least 580,000 [450,000]; and

(2) a countywide hospital district that:

- (A) has taxes imposed and collected by the commissioners court of the county; and
- (B) has teaching hospital facilities affiliated with a state-owned or private medical school.

SECTION 74. Section 301.001(1), Health and Safety Code, is amended to read as follows:

- (1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:
 - (A) a municipality;
 - (B) a political subdivision of the state;
 - (C) a state-supported health-related institution,

including:

- (i) The Texas A&M University System;
- (ii) The University of Texas System; and
- (iii) Texas Woman's University;
- (D) a nonprofit health-related institution; or
- (E) a cooperative association created under Subchapter

B, a unit of which is located in a county with a population of more than 2.5 million [1,600,000].

SECTION 75. Section 301.031(1), Health and Safety Code, is amended to read as follows:

- (1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:
 - (A) a municipality;
 - (B) a political subdivision of the state;

(C) a health-related institution supported by the state or federal government or by a federal department, division, or agency, including:

- (i) The Texas A&M University System;
- (ii) The University of Texas System;
- (iii) Texas Woman's University, and
- (iv) the Children's Nutrition Research

Center:

(D) a nonprofit health-related institution; and

(E) a cooperative association created to provide a system, a unit of which is located in a county with a population of more than 1.18 million [980,000], or in a county contiguous to a county with a population of more than 1.18 million [980,000].

SECTION 76. Section 341.082(a), Health and Safety Code, is amended to read as follows:

(a) In a home-rule municipality with a population of at least one million [800,000], an environmental health officer may be appointed to enforce this chapter.

SECTION 77. Section 711.008(d), Health and Safety Code, is amended to read as follows:

(d) Subsections (e)-(i) apply to the establishment or use of a cemetery in a county with a population of less than 235,000 [200,000] that borders the Gulf of Mexico.

SECTION 78. Section 713.008, Health and Safety Code, as amended by S.B. 404, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. The governing body of a municipality in a county with a population of at least 122,000 [120,000] but not more than 128,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

SECTION 79. Section 101.028(a), Human Resources Code, is amended to read as follows:

(a) This section applies only to counties having a population of not less than 25,650 [26,100] and not more than 25,900 [26,350] and to cities and towns within those counties.

SECTION 80. The section heading and Subsection (a), Section 43.030, Local Government Code, are amended to read as follows:

Sec. 43.030. AUTHORITY OF MUNICIPALITY WITH POPULATION OF 74,000 to 99,700 [70,000 to 90,000] IN URBAN COUNTY TO ANNEX SMALL, SURROUNDED GENERAL-LAW MUNICIPALITY. (a) A municipality that has a population of 74,000 [70,000] to 99,700 [90,000], that is located wholly or partly in a county with a population of more than 1.8 million [1,000,000], and that completely surrounds and is contiguous to a general-law municipality with a population of less than 600, may annex the general-law municipality as provided by this section.

SECTION 81. Section 43.0715(b), Local Government Code, is amended to read as follows:

(b) If a municipality with a population of less than 1.5 million [1,000,000] annexes a special district for full or limited purposes and the annexation precludes or impairs the ability of the district to issue bonds, the municipality shall, simultaneously with the annexation, pay in cash to the landowner or developer of the district a sum equal to all actual costs and expenses incurred by the landowner or developer in connection with the district that the district has, in writing, agreed to pay and that would otherwise have been eligible for reimbursement from bond

proceeds under the rules and requirements of the Texas Water Commission as such rules and requirements exist on the date of annexation.

SECTION 82. The section heading and Subsection (a), Section 43.073, Local

Government Code, are amended to read as follows:

Sec. 43.073. ABOLITION OF, OR DIVISION OF FUNCTIONS OF, LEVEE IMPROVEMENT DISTRICT ANNEXED BY MUNICIPALITY WITH POPULATION OF MORE THAN 500,000 [425,000]. (a) This section applies to a municipality with a population of more than 500,000 [425,000] that annexes all or part of the area in a levee improvement district organized under the laws of this state.

SECTION 83. The section heading and Subsection (a), Section 43.103, Local

Government Code, are amended to read as follows:

Sec. 43.103. ANNEXATION OF STREETS BY GENERAL-LAW MUNICIPALITY WITH POPULATION OF 1,245 to 1,260; 3,760 to 3,765 [4,350 to 4,374]; or 18,700 to 18,900 [17,850 to 17,900]. (a) This section applies only to a general-law municipality with a population of:

(1) 1,245 to 1,260;

(2) <u>3,760 to 3,765</u> [4,350 to 4,374]; or (3) <u>18,700 to 18,900</u> [17,850 to 17,900].

SECTION 84. The section heading and Subsection (a), Section 43.105, Local

Government Code, are amended to read as follows:

Sec. 43.105. ANNEXATION OF STREETS BY GENERAL-LAW MUNICIPALITY WITH POPULATION OF <u>984-986</u> [672-674]. (a) A general-law municipality with a population of <u>984-986</u> [672-674] may annex, by ordinance and without the consent of any person, a street, highway, road, or alley adjacent to the municipality.

SECTION 85. The section heading and Subsection (a), Section 81.023, Local

Government Code, are amended to read as follows:

Sec. 81.023. SPECIAL COUNSEL IN COUNTIES WITH POPULATION OF MORE THAN ONE MILLION [500,000]. (a) The commissioners court of a county with a population of more than one million [500,000] may employ an attorney as special counsel.

SECTION 86. Section 104.001, Local Government Code, is amended to read

as follows

Sec. 104.001. CHAPTER APPLICABLE TO CERTAIN HOME-RULE MUNICIPALITIES. This chapter applies only to a home-rule municipality with a population of <u>one million</u> [900,000] or more whose charter provides for an elected comptroller, auditor, or treasurer.

SECTION 87. The section heading and Subsection (a), Section 115.044,

Local Government Code, are amended to read as follows:

Sec. 115.044. BIENNIAL INDEPENDENT AUDIT IN COUNTIES WITH POPULATION OF 191,500 TO 200,000 [160,000 TO 170,000]. (a) A county with a population of 191,500 to 200,000 [160,000 to 170,000] shall conduct a biennial independent audit of all books, records, and accounts of each district, county, and precinct officer, agent, or employee, including those of the regular county auditor, and of all governmental units of the county hospitals, farms, and other institutions. The audit must cover all matters relating to the fiscal affairs of the county. The audit shall be conducted in each even-numbered year and must be completed before December 31 of the year.

SECTION 88. The section heading and Subsection (a), Section 130.904,

Local Government Code, are amended to read as follows:

Sec. 130.904. SHERIFF'S PETTY CASH FUND IN COUNTY WITH POPULATION OF MORE THAN 1.5 MILLION [ONE MILLION]. (a) The commissioners court of a county with a population of more than 1.5 million [one

million) may establish a petty cash fund for the sheriff's department in an amount not to exceed \$5,000. The court shall appropriate the amount from the general fund of the county.

SECTION 89. Section 152.017, Local Government Code, is amended to read as follows:

Sec. 152.017. EXCEPTIONS. This subchapter does not apply to:

(1) a judge of a court of record;

(2) a presiding judge of a commissioners court in a county with a population of 2.5 million [1.7 million] or more;

(3) a district attorney paid wholly by state funds or the district attorney's assistants, investigators, or other employees;

(4) a county auditor, county purchasing agent, or the auditor's or purchasing agent's assistants or other employees; or

(5) a person employed under Section 10, Article 42.12, Code of Criminal Procedure.

SECTION 90. Section 152.904(c), Local Government Code, is amended to read as follows:

(c) The commissioners court of a county with a population of 200,000 to 220,000 [190,000 to 204,999] shall set the annual salary of the county judge at an amount equal to or greater than 90 percent of the salary, including supplements, of any district judge in Galveston County. However, the salary may not be set at an amount less than the salary paid the county judge on May 2, 1962.

SECTION 91. The section heading and Subsection (a), Section 157.022, Local Government Code, are amended to read as follows:

Sec. 157.022. HOURS OF WORK OF PEACE OFFICERS IN COUNTIES OF MORE THAN <u>ONE MILLION</u> [500,000]. (a) A peace officer employed by a county with a population of more than <u>one million</u> [500,000] may not be required to work more hours during a calendar week than the number of hours in the normal work week of the majority of other county employees.

SECTION 92. Section 158.032, Local Government Code, is amended to read as follows:

Sec. 158.032. ELIGIBLE DEPARTMENTS. A sheriff's department in a county with a population of more than 1.18 million [950,000] may, in accordance with this subchapter, create a civil service system.

SECTION 93. Section 180.003(a), Local Government Code, is amended to read as follows:

(a) In a county with a population of 191,500 to 200,000 [160,000 to 170,000], a sheriff, deputy, constable, or other peace officer of the county or a municipality located in the county may not be required to be on duty more than 48 hours a week unless the peace officer is called on by a superior officer to serve during an emergency as determined by the superior officer.

SECTION 94. Section 230.011, Local Government Code, is amended to read as follows:

Sec. 230.011. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality with a population of more than one million [900,000].

SECTION 95. The section heading and Subsection (a), Section 270.005, Local Government Code, are amended to read as follows:

Sec. 270.005. CONTRACTS WITH FEDERAL GOVERNMENT FOR CONSTRUCTION IN COUNTY WITH POPULATION OF 230,000 TO 250,000 [240,001 TO 259,999]. (a) The commissioners court of a county with a population of 230,000 to 250,000 [240,001 to 259,999] may contract with the United States government or a federal agency for:

(1) the joint construction or improvement of roads, bridges, or other county improvements; or

(2) the maintenance of a project constructed under this section. SECTION 96. The section heading and Subsection (a), Section 292.023, Local Government Code, are amended to read as follows:

Sec. 292.023. FACILITIES IN COUNTIES WITH POPULATIONS OF 31,000 TO 31,200 [30,000 TO 31,000] and 64,250 TO 64,500 [54,000 TO 56,000]. (a) This section applies only to a county with a population of:

(1) 31,000 to 31,200 [30,000 to 31,000]; or

(2) 64,250 to 64,500 [54,000 to 56,000]. SECTION 97. The section heading and Subsection (a), Section 292.025,

Local Government Code, are amended to read as follows:

Sec. 292.025. FACILITIES IN COUNTIES WITH POPULATIONS OF $\frac{26,500 \text{ TO } 27,200}{26,500 \text{ to } 27,200}$ [25,001 TO 25,049]. (a) This section applies only to a county with a population of $\frac{26,500 \text{ to } 27,200}{25,001 \text{ to } 25,049}$].

SECTION 98. The section heading and Subsection (a), Section 292.027,

Local Government Code, are amended to read as follows:

ASSESSOR-COLLECTOR **FACILITIES** Sec. 292.027. TAX COUNTIES WITH POPULATIONS OF 45,000 TO 50,000 [38,200 TO 39,000]. (a) This section applies only to a county with a population of 45,000 to 50,000 [38,200 to 39,000].

SECTION 99. Section 305.011, Local Government Code, is amended to read

as follows:

Sec. 305,011, MUNICIPALITY AND COUNTY COVERED BY SUBCHAPTER, This subchapter applies only to:

(1) any municipality; and

(2) a county that has a population of more than one million [500,000], has issued bonds for the purpose of constructing a coliseum or stadium within the county, and is operating the coliseum or stadium directly and not through another person under a lease or other agreement not subject to cancellation by the county in the event of a sale of the coliseum or stadium.

SECTION 100. Section 318.021, Local Government Code, is amended to

read as follows:

Sec. 318.021. APPROPRIATIONS TO HISTORICAL FOUNDATIONS: COUNTIES WITH POPULATION OF 191,500 TO 200,000 [160,000 TO 170,000]. The commissioners court of a county with a population of 191,500 to 200,000 [160,000 to 170,000] may appropriate money from the general fund of the county to a historical foundation or organization in the county for the purpose of purchasing, constructing, restoring, preserving, maintaining, or reconstructing historical landmarks, buildings, and furnishings that are of historical significance to the county. The foundation or organization must be incorporated under the law of this state as a nonprofit corporation.

SECTION 101. The section heading and Subsection (a), Section 361.042,

Local Government Code, are amended to read as follows:

Sec. 361.042. MUNICIPAL-COUNTY JAIL FACILITIES IN COUNTY WITH POPULATION OF 98,000 TO 100,000 [84,000 TO 86,000]. (a) Instead of providing and maintaining its own jail, the commissioners court of a county with a population of 98,000 to 100,000 [84,000 to 86,000] may provide safe and suitable jail facilities for the county by contracting for the facilities with the governing body of the municipality that is the county seat of the county.

SECTION 102. Section 371.001(a), Local Government Code, is amended to

read as follows:

(a) The governing body of a municipality with a population of 900,000 [500.000] or less may appropriate from its general fund an amount not to exceed one percent of the general fund budget for that year for the purpose of advertising the municipality and promoting its growth and development.

SECTION 103. Section 381.001(c), Local Government Code, is amended to read as follows:

(c) In a county with a population of 14,320 to 14,340 [13,300 to 13,350], or 15,500 to 15,600 [14,650 to 14,800], or 17,710 to 17,800 [17,900 to 18,100], or 22,900 to 23,000 [22,600 to 23,000], a person appointed to the commission also must be serving or must have served on an industrial foundation committee, commissioners court, municipality's governing body, or school board. In addition, in those counties information obtained by the commission shall be available to the commissioners court.

SECTION 104. The section heading and Subsection (a), Section 412.012, Local Government Code, are amended to read as follows:

Sec. 412.012. COUNTY WITH MORE THAN 1.18 MILLION [900,000] RESIDENTS. (a) The commissioners court of a county with a population of more than 1.18 million [900,000] may enter a contract with a district created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution under which the district will provide and operate a water supply system or sewage system in areas of the county located outside the limits of a municipality.

SECTION 105. Section 445.002(a), Local Government Code, is amended to read as follows:

- (a) This section applies to a county with a population of:
 - (1) <u>13,000 to 13,100</u> [13,350 to 13,400];
 - (2) 17,250 to 17,500 [16,500 to 16,700];
 - (3) 17,750 to 17,870 [17,400 to 17,450];
 - (4) 36,350 to 36,400 [31,000 to 31,400]; (5) 36,500 to 37,000 [37,700 to 38,000];
 - (6) 185,000 to 190,000 [170,000 to 225;000]; [or]
 - (7) 200,000 to 225,000; or
 - (8) 235,000 or more.

SECTION 106. Section 445.011(b), Local Government Code, is amended to read as follows:

(b) A county with a population of 29,000 to 29,500 [24,600 to 24,700] may authorize the use of county equipment, machinery, and employees to construct, establish, and maintain a public airstrip in the county.

SECTION 107. Section 6.41(b), Tax Code, is amended to read as follows:

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to not more than nine members or, in a district established for a county with a population of at least 250,000, to not more than 15 members or, in a district established for a county with a population of at least one million [500,000], to not more than 30 members or, in a district established for a county with a population of at least 1,500,000, to not more than 45 members.

SECTION 108. The section heading and Subsection (a), Section 351.106, Tax Code, are amended to read as follows:

Sec. 351.106. ALLOCATION OF REVENUE: MUNICIPALITIES WITH POPULATION OF ONE MILLION [900,000] AND COUNCIL-MANAGER GOVERNMENT. (a) A municipality that has a population of one million [900,000] or more and that has adopted a council-manager form of government shall use the amount of revenue from the tax that is derived from the application of the tax at a rate of more than four percent of the cost of a room as follows:

(1) no more than 55 percent to:

(A) constructing, improving, enlarging, equipping, and repairing the municipality's convention center complex; or

(B) pledging payment of revenue bonds and revenue refunding bonds issued under Chapter 63, Acts of the 59th Legislature, Regular

Session, 1965 (Article 1269j-4.1, Vernon's Texas Civil Statutes), for the municipality's convention center complex; and

(2) at least 45 percent for the purposes provided by Section 351.101(a)(3).

SECTION 109. Section 352.002(a), Tax Code, is amended to read as follows:

- (a) The commissioners courts of the following counties by the adoption of an order or resolution may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping:
 - (1) a county that has a population of more than two million;
- (2) a county that has a population of 90,000 or more, borders on the Republic of Mexico, and does not have three or more cities that each have a population of more than 17,500;
 - (3) a county in which there is no municipality;
- (4) a county in which there is located an Indian reservation under the jurisdiction of the United States government; and
- (5) a county that has a population of 17,500 [15,000] or less in which there is located a horse racing track licensed as a class 1 or class 2 racetrack under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

SECTION 110. Section 53.029(a), Water Code, is amended to read as follows:

(a) This section applies to a district located in a county having a population of 1.18 million [900,000] or more or adjacent to a county having a population of 1.18 million [900,000] or more, according to the last preceding federal census.

SECTION 111. Section 4(b), Chapter 573, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) This section may only be used to remove permanent school fund land that is exempt from taxation under the constitution and general laws of the state at the time of removal and located in counties with a population of 590,000 [450,000] or more according to the most recent federal census.

SECTION 112. (a) This Act is not intended to revive a law that was impliedly repealed by a law enacted by the 71st Legislature or a previous legislature.

(b) To the extent that a law enacted by the 72nd Legislature, Regular Session, conflicts with this Act, the other law prevails, regardless of the relative dates of enactment or the relative effective dates.

SECTION 113. This Act takes effect September 1, 1991.

SECTION 114. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Whitmire and by unanimous consent, the Senate concurred in the House amendment to S.B. 992 by a viva voce vote.

SENATE BILL 1034 WITH HOUSE AMENDMENT

Senator Bivins called S.B. 1034 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Schechter

Amend S.B. 1034 as follows:

(1) On page 1, line 12, add

(c) This chapter does not limit the liability of a person for intentional misconduct or gross negligence.

(2) On page 1, line 11, after "of a public school district" add "on the premises of the district".

The amendment was read.

Senator Bivins moved to concur in the House amendment to S.B. 1034.

On motion of Senator Bivins and by unanimous consent, the motion to concur was withdrawn.

SENATE BILL 1445 WITH HOUSE AMENDMENT

Senator Barrientos called S.B. 1445 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Rangel

Amend S.B. 1445 page 1, line 13, after the word "purpose." add:

'However, the total fee may not exceed \$30.00 per semester or \$15.00 per six week summer term.'

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to S.B. 1445 by a viva voce vote.

SENATE BILL 1034 WITH HOUSE AMENDMENT

Senator Bivins again called S.B. 1034 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer again laid the bill and the House amendment before the Senate.

Amendment - Schechter

Amend S.B. 1034 as follows:

- (1) on page 1, after line 12, add
- (c) This chapter does not limit the liability of a person for intentional misconduct or gross negligence.
- (2) on page 1, line 11, after "of a public school district". add "on the premises of the district".

The amendment was read.

Senator Bivins moved to concur in the House amendment to S.B. 1034.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Barrientos.

SENATE BILL 1462 WITH HOUSE AMENDMENT

Senator Whitmire called S.B. 1462 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Heflin

Amend S.B. 1462 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to credit in, contributions to, and benefits and administration of retirement systems for police officers in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Section 2, Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (i) and (j) to read as follows:

(i) "Surviving spouse" means a person who was married to a deceased active member at the time of the member's death, or to a deceased retired member before the member's retirement or for a period of at least five years before the member's death, and whose marriage was recorded in the records of the recorder's office in the county in which the marriage ceremony was performed; or a person who has on file with the Pension Board a declaration of common-law marriage, supported by evidence as required by the Board, and signed by the member and the member's common-law spouse before a notary public.

(j) "Widow" or "widower" means a deceased member's surviving spouse who remains unmarried, never having had another marriage certificate recorded in any

county's recording office after the date of the member's death.

SECTION 2. Section 4(d)(1), Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) The Board shall elect from its membership, annually, a chairman, vice-chairman and secretary. The chairman must be a person who has been elected to the Board by the members of the police department and the Pension System. During a person's term as chairman, the person shall oversee the administration of the Pension System and may not be assigned any other duties by the city, but is entitled to receive the salary the person would otherwise receive for the person's position with the police department, including any salary increases attributable to merit raises or promotions. Pursuant to the powers granted under the charter of such city and except as provided by Subdivision (2) of this subsection, the mayor or administrative head of the city shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under the direction of the mayor or administrative head of the city and treasurer or director of the treasury, shall keep all of the records of, and perform all of the clerical services for, the Pension System. The salaries of such employees shall be paid by the city.

SECTION 3. Section 4, Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended by

adding Subsections (j) and (k) to read as follows:

(j) The Pension Board may purchase from an insurer licensed to do business in this state one (1) or more policies of insurance that provide for reimbursement of a Board member, officer, or employee of the Pension Board for liability imposed as damages because of an alleged act, error, or omission committed in the individual's capacity as fiduciary or co-fiduciary of assets of the Pension Fund and for costs and expenses incurred by a fiduciary or co-fiduciary in defense of a claim of an alleged act, error, or omission. A policy of insurance purchased under this subsection may not provide for reimbursement of a Board member, officer, or employee of the Pension Board for liability imposed or expenses incurred because

of the individual's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently. The cost of insurance coverage purchased under this subsection shall be paid from money in the Pension Fund.

(k)(1) If insurance as described by Subsection (j) of this section is unavailable, insufficient, inadequate, or otherwise not in effect, the Pension Board may indemnify a Board member, officer, or employee of the Pension Board for liability imposed as damages because of an alleged act, error, or omission committed in the individual's capacity as fiduciary or co-fiduciary of assets of the Pension Fund and for reasonable costs and expenses incurred by a fiduciary or a co-fiduciary in defense of a claim of an alleged act, error, or omission. Indemnification may not extend to liability imposed or expenses incurred by a Board member, officer, or employee of the Pension Board because of the individual's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently.

(2) A determination of indemnification shall be made by a majority vote of Board members. If a proposed indemnification is of a Board member, that Board member may not vote on the matter.

(3) The Board may adopt a policy establishing a method for

presentation, approval, and payment of claims for indemnification.

(4) Indemnification approved under this subsection extends to acts, errors, and omissions of former Board members, officers, or employees as long as the alleged act, error, or omission occurs after the effective date of the 1991 amendment of this Act.

SECTION 4. Section 6(b), Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the salary of the [second] highest rank the member has obtained by civil service examination [classification] within the salary schedule of the police department. It is the intent of this section to limit both the contribution and retirement benefits of any member to the salary level of the [second] highest rank the member obtains by civil service examination [of the police department personnel classification schedule], provided that if the member has not held the same classified position for three (3) [five (5)] years immediately preceding [prior to] the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three (3) [five (5)] years immediately preceding the date of retirement.

SECTION 5. Sections 11(a), (a-1), (b), (e), and (h), Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil

Statutes), are amended to read as follows:

(a) A person who becomes a member of the Pension System on or after September 1, 1975, and who has been in the service of the city police department for the period of twenty (20) years may retire on or after July 1, 1988, at the age of fifty (50) years and shall be entitled to a retirement pension of an amount equal to two and one-fourth percent (2.25%) [forty-five percent (45%)] of his base salary per month for the first twenty (20) years of service, plus an additional amount equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years, not to exceed a total pension equal to eighty percent (80%) of base salary, such base salary to be the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for three (3) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three (3) years preceding retirement. Except as provided in Subsection (a-1) of this section, no retirement pension may be paid to a member who has not attained the age of fifty (50) years.

(a-1) A person who was a member of the pension system before September 1, 1975, may retire on or after July 1, 1988, regardless of age upon completion of twenty (20) years of service in the city police department and shall be entitled to a retirement pension of an amount equal to two and one-fourth percent (2.25%) [forty-five percent (45%)] of his base salary per month for the first twenty (20) years of service, plus an additional amount equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years, not to exceed a total pension equal to eighty percent (80%) of base salary, such base salary to be the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for three (3) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three (3) years preceding retirement.

(b) If a member of the Police Pension System is promoted or appointed to any classified position above a classified position obtainable by civil service examination [the second highest] in the police department personnel classification schedule, that member's contribution and retirement benefits will be computed on the base salary of the [second] highest rank the person has obtained by civil service examination within the salary schedule of [classified position in] the police department [personnel classification schedule], provided that if the member has not held the same classified position for three (3) [five (5)] years immediately preceding [prior to] the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three (3) [five (5)] years immediately preceding retirement. [For the purposes of this Act, the position of the Chief of Police shall be considered the highest classified position in the personnel classification schedule in the police department.]

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. [However, when such member has completed twenty (20) years' service in the police department and if the physicians of Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty-five (65) years, at which time his retirement pension shall be computed as hereinbefore stated:]

(h) A retiree who receives a service or disability retirement pension under this Act is entitled to receive an additional amount each month equal to \$88.05, beginning on the person's retirement date or on the effective date of the 1989 amendment of this Act, whichever is later, and continuing until the end of [person reaches age 65. Thereafter, the payment will be reduced to \$55.38 each month. Payments of an additional amount provided by this subsection end with] the month in which the retiree [person] dies. This amount is intended to defray the retiree's group medical insurance costs and will be paid directly by the Pension Fund [to the insurer providing group coverage, as long as the retiree is covered by the insurance. If a retiree elects not to obtain the coverage or terminates the coverage, the monthly amount will be paid] to the retiree [directly] for the person's lifetime.

SECTION 6. Section 13, Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies on or after July 1, 1986, from

any cause whatsoever after he has become entitled to an allowance or pension, and leaves a surviving [a] spouse [to whom the member was married prior to his retirement or for a period of at least five (5) years prior to the member's death (hereinafter referred to as the "surviving spouse")], a child or children under the age of eighteen (18) years or a dependent parent, the Board shall order paid a monthly allowance as follows: (a) to the surviving spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was granted to the member upon service or disability pension based on his length of service in the police department; (b) to the guardian of each child, the sum of twenty-five (\$25) Dollars a month until the child reaches the age of eighteen (18) years or marries; (c) to the guardian of each child, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be divided equally among the unmarried children under eighteen (18) years; (d) to the dependent parent, only in case no spouse or dependent child is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(e) On the death of a member, inactive member, retired member, or individual receiving a survivor's pension, the Pension Fund shall pay to the beneficiary or beneficiaries or, in the absence of a beneficiary, to the estate of the member, inactive member, retired member, or survivor, a lump sum equal to the amount, if any, by which the accumulated member contributions, without interest, exceed the aggregate of all pension payments made.

SECTION 7. Section 1, Article 6243g-3, Revised Statutes, is amended by amending Subdivision (h) and adding Subdivision (p) to read as follows:

(h) "Inactive member" shall mean a member who:

(1) has completed 20 years of credited service, has not attained age 50 [55], and has left the classified service;

(2) is not eligible to begin receiving a service or disability pension; and

(3) has neither applied for nor received a refund of his contributions.

(p) "Surviving spouse" means a person:

(1) who was married to a deceased active member at the time of the member's death, or to a deceased retired member before the member's retirement or for a period of at least five years before the member's death, whose marriage was recorded in the records of the recorder's office in the county in which the marriage ceremony was performed, and who remains unmarried, never having another marriage certificate recorded in any county's recording office after the date of the member's death; or

(2) who has on file with the pension board a declaration of common-law marriage, supported by evidence as required by the board, and signed by the member and the member's common-law spouse before a notary public.

SECTION 8. Sections 17(b) and (c), Article 6243g-3, Revised Statutes, are amended to read as follows:

(b) Effective July 1, 1991, the amount of the monthly service pension payable to a retired member who retires on or after July 1, 1988, is an amount equal to 2.25 percent of the member's base salary per month for the first 20 years of service [45 percent of the member's final compensation per month], plus an additional amount equal to two percent of the member's base salary [final compensation] per month multiplied by the number of years in excess of 20 years, to the nearest one-twelfth of a year, in the member's period of credited service, not to exceed a total pension equal to 80 percent of final compensation, except that if the member has not held the same classified position for three years immediately preceding the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three years immediately preceding the date of retirement.

(c) A retiree who receives a service or disability retirement pension under this article is entitled to receive an additional amount each month equal to \$88.05,

beginning on the person's retirement date or on the effective date of the 1989 amendment of this article, whichever is later, and continuing until the end of [person reaches age 65. Thereafter, the payment will be reduced to \$55.38 each month. Payments of an additional amount provided by this subsection end with] the month in which the retiree [person] dies. This amount is intended to defray the retiree's group medical insurance costs and will be paid directly by the pension fund [to the insurer providing group coverage, as long as the retiree is covered by the insurance. If a retiree elects not to obtain the coverage or terminates the coverage, the monthly amount will be paid] to the retiree [directly] for the person's lifetime.

SECTION 9. Article 6243g-3, Revised Statutes, is amended by adding Section 18 to read as follows:

Sec. 18. MILITARY SERVICE. (a) Beginning July 1, 1990, a member of the pension system, while engaged in active military service during a national emergency, is not required to make the monthly payments into the pension fund provided by in this article and does not, because of absence as a result of the military service, lose any previous years' service with the city. Military service described by this section is considered continuous service in the police department if, when the member is discharged from the military service, the member returns to the city police department under provisions of the city charter, and the military service does not exceed the period of the national emergency.

(b) The city shall make its regular monthly payments into the pension fund for each member who is engaged in military service described by this section.

(c) If a member of the pension system dies, either directly or indirectly, as a result of the military service, the member's spouse, dependent parent, or other dependents are entitled to receive a refund of any contributions the member made to the pension system.

SECTION 10. Section 24, Article 6243g-3, Revised Statutes, is amended to

Sec. 24. ADJUSTMENT OF BENEFITS. Beginning July 1, 1991 [January 1, 1987], a pension payable under this article may be adjusted annually on April 1, beginning in the year the member attains age 50 [55], or in the case of disability and survivor's pensions, beginning in the year next following 12 months of payments, in accordance with two-thirds (2/3) of the percentage changes in the Consumer Price Index for All Urban Consumers, but not below the original pension amount. The annual adjustment under this section shall never be less than two and one-half percent (2.5%) and shall never be more than eight percent (8%) [not] compounded, notwithstanding a greater or lesser increase in the consumer price index.

SECTION 11. Section 25(a), Article 6243g-3, Revised Statutes, is amended to read as follows:

(a) A service pension, disability pension, survivor's pension, death benefit, or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed. If a retired member receives both pension benefits from the fund and a salary as a classified officer from the city that cover the same period of time, the retired member shall repay pension benefits received during the period to the fund. On request of the board, the city attorney shall file suit in a court of competent jurisdiction to recover pension benefits owed the fund under this subsection.

SECTION 12. Section 28, Article 6243g-3, Revised Statutes, is amended to read as follows:

Sec. 28. MEMBER CONTRIBUTIONS. (a) Each member of the pension fund shall pay into the pension system 8.75 percent of the base salary provided for the classified position in the police department held by the member, or of the base

salary for the highest classified position the member has obtained by civil service examination, if the member does not currently hold a classified position. The payments shall be deducted by the city from the salary paid each member and shall be paid to the treasurer of the pension fund. [The city shall deduct monthly from the salary or compensation of each member participating in the fund a sum equal to seven percent of such salary or compensation, such deduction to be paid by the city to the fund:]

(b) [For purposes of this article, the chief of police shall be considered to hold the highest classified position in the department.] The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the salary of the highest rank the member has obtained by civil service examination within the salary schedule of the police department. It is the intent of this section to limit both the contributions and retirement benefits of any member to the salary level of the highest rank the member obtains by civil service examination, provided that if the member has not held the same classified position for three years immediately preceding the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for three years immediately preceding the date of retirement [compensation of the second highest classification within the salary schedule of the police department. The maximum benefit which may be paid from the fund to any person holding a position above that of the second highest classified position shall be based on the compensation paid the second highest classified position within the department].

SECTION 13. (a) This Act takes effect July 1, 1991, if this Act receives the votes required by Article III, Section 39, of the Texas Constitution for that effective date. If this Act does not receive the votes required by that section for an effective date before the 91st day after the last day of the legislative session, this Act takes effect September 1, 1991.

- (b) The changes in law made by this Act apply, except as otherwise specifically provided by this Act, only to contributions that become due and retirements and deaths that occur on or after the effective date of this Act.
- (c) The change in law made by this Act in the qualifications of the chairmen of pension boards apply only to terms of chairmen that begin on or after the effective date of this Act.
- (d) The change in law made by this Act in the payment of benefits to defray group insurance costs applies to all payments of the benefits that become due on or after the effective date of this Act.
- (e) The change in law made by Section 4 of this Act applies only to appointments or promotions that are made on or after the effective date of this Act. An appointment or promotion made before the effective date of this Act is governed by Section 6(b), Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), as it existed at the time the appointment or promotion was made, and the former law is continued in effect for this purpose.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Whitmire moved to concur in the House amendment to S.B. 1462.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE CONCURRENT RESOLUTION 160

Senator Harris of Tarrant offered the following resolution:

S.C.R. 160, Directing the Senate Enrolling Clerk to make certain corrections in S.B. 837.

The resolution was read.

On motion of Senator Harris of Tarrant and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

SENATE RESOLUTION 763

Senator Montford offered the following resolution:

WHEREAS, Texans have stood fast against oppressors of freedom since the founding of the Republic; and

WHEREAS, Texans have rallied to the glorious flag of the United States of America on every occasion when service to the nation was needed; and

WHEREAS, The very existence of the small nation of Kuwait was threatened by a single ruthless tyrant, Saddam Hussein of Iraq; and

WHEREAS, The President of the United States, George Bush, invoked the loftiest principles of this nation and led freedom-loving countries in resistance to Iraqi tyranny; and

WHEREAS, Texans fought in Operation Desert Storm in the greatest numbers, over 50,000 strong; and

WHEREAS, Twenty-nine brave Texans gave the ultimate sacrifice of their lives in the defense of liberty; and

WHEREAS, A most benevolent God has rewarded these sacrifices with glorious, overwhelming victory; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby urge all citizens of the great state of Texas to join together in celebration of this grand triumph and commemoration of the personal sacrifices endured; and, be it further

RESOLVED, That all Texas communities be urged to support the Governor's Committee to Salute Texas Troops and to honor these brave men and women who served so magnificently and so far from home; and, be it further

RESOLVED, That the official state event be entitled "Capitol Salute to Texas Troops" and that this commemoration be celebrated by appropriate ceremonies, parades, vigils, displays, pageantry, and patriotic music in the capital city of Texas beginning on Saturday, June 29, 1991, and culminating on Independence Day, July 4, 1991, with patriotic festivities in communities all around the state.

ARMBRISTER
BARRIENTOS
BIVINS
BROOKS
BROWN
CARRIKER
DICKSON
ELLIS
GREEN
HALEY
HENDERSON
JOHNSON

LEEDOM
LUCIO
LYON
MONCRIEF
MONTFORD
PARKER
RATLIFF
ROSSON
SIBLEY
SIMS
TEJEDA
TRUAN

ZAFFIRINI HARRIS OF DALLAS KRIER **TURNER**

The resolution was read and was adopted by a viva voce vote.

SENATE RESOLUTION 854

Senator Brooks offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That the Senate Rules of the 72nd Legislature, adopted February 11, 1991, be amended by adding Subsection (d) to Rule 7.12 to read as follows:

(d) The Senate Enrolling Clerk may make certain technical corrections in bills and resolutions to conform the language to requirements of Subsection (b) of this rule and of the Texas Constitution. This subsection applies to misspelled words, mistakes in citations and internal references, numbering and reprinting errors, bracketing and underlining errors, mistakes in grammar and punctuation, and insufficient captions.

The resolution was read and was adopted by a viva voce vote.

(President in Chair)

SENATE BILL 1357 WITH HOUSE AMENDMENTS

Senator Ratliff called S.B. 1357 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Stiles

Amend S.B. 1357 as follows:

(1) Add a new Section 2, and renumber Sections 2 and 3 as Sections 3 and 4, to read as follows:

SECTION 2. Section 135.02, Education Code, is amended by adding Subsection (d) to read as follows:

- (d) The board may establish the extension center located in the City of Marshall and accept or acquire land and facilities for that purpose only if the establishment of the center is approved by the Texas Higher Education Coordinating Board.
- (2) In existing Section 2(a), strike "Not later than January 1, 1992," and substitute "Not later than January 1, 1992, or as soon as practicable after the Texas Higher Education Coordinating Board has approved establishment of the extension center,".
- (3) In existing Section 2(b), strike "not later than the fall semester in 1992" and substitute "not later than the fall semester in 1992, or not later than the fall semester for which admission is practicable after the Texas Higher Education Coordinating Board has approved establishment of the extension center".

Amendment - Johnson

Amend S.B.	1357 by inserting	the following sea	ction, appropriately	numbered
between SECTIO	NS and			

SECTION _____. Section 135.02, Education Code, is amended by adding a Subsection (e) which reads as follows:

(e) It is the intent of the legislature that the Texas State Technical Institute extension center in Marshall shall not offer general academic or technical courses or programs that duplicate the general academic or technical courses and programs offered by Panola College, Northeast Texas Community College, and Kilgore

College. The Texas Higher Education Coordinating Board is hereby assigned the responsibility to determine whether proposed courses and programs are duplicative.

The amendments were read.

Senator Ratliff moved to concur in the House amendments to S.B. 1357.

The motion prevailed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 2665 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2665, Relating to filing of lawsuits by and against the Texas Low-Level Radioactive Waste Disposal Authority and the selection of the submittal of a license application for a disposal site by the Texas Low-Level Radioactive Waste Disposal Authority and the review of the application by the Texas Department of Health.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2665 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 2665 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 858 WITH HOUSE AMENDMENTS

Senator Harris of Dallas called S.B. 858 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Puente

On page 1, line 20 strike "a shorthand reporter" and add "an attorney". On line 20 strike "not".

Amendment - Denton

Amend S.B. 858 by striking all language after "Sec. 52.059. Charges for Depositions." and adding "A determination of who will pay for deposition costs will be made prior to the taking of any deposition."

The amendments were read.

Senator Harris of Dallas moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 858 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris of Dallas, Chair; Harris of Tarrant, Green, Turner, Henderson.

SENATE RULE 7.23(b) SUSPENDED

On motion of Senator Truan and by unanimous consent, Senate Rule 7.23(b) was suspended as it relates to House amendments to S.B. 587.

SENATE BILL 587 WITH HOUSE AMENDMENTS

Senator Truan called S.B. 587 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Craddick

Amend Sec. 421.003 of SECTION 2 of S.B. 587 by adding a Subsection (e) to Sec. 421.003 to read as follows:

(e) This section shall not apply to those clothes-washing or dish-washing machines that are subject to and in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12.

Amendment - Craddick

Amend S.B. 587 as follows:

Amend Section 1 by:

- 1. Deleting all of "Sec. 421.004", which begins with language "Sec. 421.004. CRIMINAL PENALTY." and ends with the language "confinement in jail for not more than 30 days, or both such fine and confinement.";
 - 2. Renumber the subsequent sections accordingly.

The amendments were read.

Senator Truan moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 587 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Truan, Chair; Sims, Sibley, Carriker, Barrientos.

COMMITTEE SUBSTITUTE HOUSE BILL 749 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 749, Relating to the continuation and operation of the Texas Turnpike Authority.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 749 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 2, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. CREDIT OF STATE NOT PLEDGED. Turnpike revenue bonds issued under the provisions of this Act shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from revenues by law. All such turnpike revenue bonds shall contain on the face thereof a statement to the effect that neither the State, nor the Turnpike Authority or any political subdivision of the State shall be obligated to pay the same or the interest thereon except from revenues of the particular project for which they are issued the amounts pledged to their payment and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The [Turnpike] Authority shall not be authorized to incur financial obligations which cannot be serviced from tolls or revenues realized from owning or operating its projects as defined in this Act or from moneys provided by this Act law.

SECTION 2. Section 3, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as

follows:

Sec. 3. TEXAS TURNPIKE AUTHORITY. (a) There is hereby created an authority to be known as the "Texas Turnpike Authority," hereinafter sometimes referred to as the "Authority." By and in its name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the State of Texas, with offices located in Austin, Texas, on or before September 1, 1997, and the exercise by the Authority of the powers conferred by this Act in the construction, operating, and maintenance of turnpike projects shall be deemed and held to be an essential governmental function of the State.

(b) The Board of Directors of the Authority (hereinafter in this Act sometimes called the "Board") shall be composed of nine directors, who shall occupy, respectively, places on the Board to be designated as Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12]. Six [The] Directors who are representatives of the general public [will occupy Places 2, 3, 5, 6, 8, 9, 10, 11, and 12] shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointed Directors shall serve staggered terms of six (6) years with the terms of one-third of the members expiring on February 15 of each odd-numbered year.

(c) Each Director appointed to the Board [fill Places 2, 3, 5, 6, 8, 9, 10, 11, and 12] shall have been a resident of the State and of the County from which he shall have been appointed for a period of at least one (1) year prior to his appointment. A person is not eligible for appointment if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of toll road construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization regulated by the Authority or receiving funds from the Authority;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the Authority or receiving funds, other than compensation for acquisition of turnpike right-of-way, from the Authority; or

or funds from the Authority, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses, or compensation for acquisition of turnpike right-of-way.

(d) Appointments to the <u>Board [Authority]</u> shall be made without regard to the race, <u>color</u>, <u>handicap [creed]</u>, sex, religion, <u>age</u>, or national origin of the

appointees.

- (e) [The members of the Texas State Highway Commission at the time this Act becomes effective are hereby made Directors of said Authority, and if for any reason said Texas State Highway Commission at such time because of vacancies is composed of less than three (3) members, then the person or persons appointed to fill such vacancies are hereby made Directors of said Authority. The Highway Commissioners and their successors in office shall respectively and successively occupy Places 1, 4, and 7 on such Board.] Each member of the [Texas] State Highway and Public Transportation Commission shall serve ex officio as a member of the Board of Directors of such Authority. All Directors shall serve until their successors have been duly appointed and qualified, and vacancies in unexpired terms shall be promptly filled by the Governor.
- (f) All members of the Board of Directors shall be eligible for reappointment. All directors shall have equal status and all Directors shall have a vote. Each member of the Board before entering upon his duties shall take an oath as provided by Section 1 of Article XVI of the Constitution of the State of Texas.
- (g) The Governor shall designate one Director as the chairman of the Board to serve in that capacity at the pleasure of the Governor. The Board shall elect one of the Directors as [chairman and another as] vice chairman, and shall elect a secretary and treasurer who need not be a member of the Board. A majority of the [Seven] members of the Board shall constitute a quorum and the vote of a majority shall be necessary for any action taken by the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.
- (h) Before the issuance of any turnpike revenue bonds under the provisions of this Act, each Director shall execute a surety bond in the penal sum of Twenty-five Thousand Dollars (\$25,000) and the secretary and treasurer shall execute a surety bond in the penal sum of Fifty Thousand Dollars (\$50,000), each surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State of Texas as surety and to be approved by the Governor and filed in the office of the Secretary of State. The expense of such bonds shall be paid by the Authority.

[Each appointed Director may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and public hearing unless the notice and public hearing are in writing expressly waived. Failure of an appointed member to attend at least one-half of the regularly scheduled meetings held each year automatically removes such member and creates a vacancy on the Board.]

(i) The <u>Directors</u> [members of the Authority] shall not be entitled to any additional compensation for their services, but each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the authority of this Act.

(j) The Legislature imposes on any Director, who may be a member of the State Highway and Public Transportation Commission the extra duties required hereunder.

SECTION 3. Section 3a, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3a. APPLICATION OF SUNSET ACT. The Texas Turnpike Authority is subject to [the Texas Sunset Act (]Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter [Act], the Authority [authority] is abolished and this Act expires December 1, 1991. The abolition date prescribed by this subsection does not require the Sunset Advisory Commission to conduct any review or prepare any report other than the review undertaken before the convening of the 72nd Legislature, Regular Session, 1991, or the report submitted to that legislature.

SECTION 4. Sections 4(c) and (d), Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), are amended

to read as follows:

(c) The word "Project" or the words "Turnpike Project" shall mean any express highway or turnpike which the Authority may at any time determine to construct under the provisions of this Act and any improvement, extension, or expansion to that highway or turnpike and includes[, including its] facilities to relieve traffic congestion and to promote safety, and [shall embrace] all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project; provided, that the location of a Project must before final designation, be approved by the State Highway Commission. Provided, however, any "Project" or "Turnpike Project" which the Authority may construct under the authority of this Act shall at all times be deemed a public highway within the meaning of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941, and to that end no motor bus company, common carrier motor carrier, specialized motor carrier, contract carrier or other motor vehicle operation for compensation and hire shall be conducted thereon except in accordance with the terms and provisions of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Acts, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941.

(d) The word "Cost" as applied to a turnpike project shall embrace the cost of constructing, improving, extending, or expanding the project; [construction,] the cost of the acquisition of all land, right-of-ways, property rights, easements and interests acquired by the Authority for such construction, improvement, extension, or expansion; the cost of all machinery and equipment, financing charges, interest prior to and during construction, improvement, extension, or expansion and for one (1) year after completion of the construction, improvement, extension, or expansion; cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing, improving, extending, or expanding any such Project; [;] administrative expense

and such other expense as may be necessary or incident to the construction, improvement, extension, or expansion of the Project; [;] the financing of such construction, improvement, extension, or expansion and the placing of the Project in operation. Any obligation or expense hereafter incurred by the State Highway Commission for and on behalf of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction, improvement, extension, or expansion of a Project shall be regarded as a part of the cost of such Project and shall be reimbursed to the State Highway Department out of the proceeds of turnpike revenue bonds hereinafter authorized.

SECTION 5. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 4a to read as follows:

- Sec. 4a. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation may not be an appointed Director of the Authority or an employee of the Authority who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.
- (b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation may not be an appointed Director and may not be an Authority employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person may not serve as an appointed Director or act as the general counsel to the Authority if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Authority.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

SECTION 6. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 4b to read as follows:

Sec. 4b. REMOVAL OF DIRECTOR. (a) It is a ground for removal of an appointed Director from the Board if the Director:

(1) does not have at the time of appointment the qualifications required by Section 3 of this Act;

(2) does not maintain during service on the Board the qualifications required by Section 3 of this Act;

(3) violates a prohibition established by Section 4a of this Act;

(4) cannot discharge the Director's duties for a substantial part of the term for which the Director is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled Board meetings that the Director is eligible to attend during a calendar year unless the absence is excused by majority vote of the Board.

(b) The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a Director exists.

(c) If the administrative head of the Authority has knowledge that a potential ground for removal exists, that person shall notify the chairman of the Board of the

ground. The chairman shall then notify the Governor that a potential ground for

SECTION 7. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section

4c to read as follows:

Sec. 4c. PROFESSIONAL INFORMATION; DIVISION RESPONSIBILITY. (a) The Board shall provide to the Directors and Authority employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The Board shall develop and implement policies that clearly define the

respective responsibilities of the Board and the staff of the Authority.

SECTION 8. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 4d to read as follows:

Sec. 4d. PERSONNEL POLICIES. (a) The administrative head of the Authority or the administrative head's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The administrative head or the administrative head's designee shall develop a system of annual performance evaluations. All merit pay for employees of the

Authority must be based on the system established under this subsection.

(c) The administrative head or the administrative head's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the Authority work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the Authority work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of

significant underuse.

- (d) A policy statement prepared under Subsection (c) of this section must cover an annual period, be updated at least annually, and be filed with the Governor's office.
- (e) The Governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 9. Section 5, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 5. GENERAL GRANT OF POWERS AND DUTIES IMPOSED. The Authority is hereby authorized, empowered, and it shall be its duty:
- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business:

(b) To adopt an official seal and alter the same at pleasure;

(c) To sue and be sued in its own name, plead and be impleaded; provided, however, that any and all actions at law or in equity against the Authority shall be brought in the county where the cause of action arises, and if land is involved, including condemnation proceedings, suit shall be brought in the county where the land is situated;

- (d) To construct, maintain, repair and operate Turnpike Projects as hereinabove defined at such locations within the State as may be determined by the Authority subject to approval as to location by the State Highway and Public Transportation Commission; provided that the Authority shall have no power to fix, charge, or collect tolls for transit over any existing free public Highway;
- (e) To issue turnpike revenue bonds of the Authority payable solely from revenues, including tolls pledged to such bonds, except as otherwise authorized by this Act, for the purpose of paying all or any part of the cost of a Turnpike Project; turnpike[. Turnpike] bonds shall be issued for each separate project;
- (f) To fix, revise, and adjust from time to time tolls for transit over each separate Turnpike Project;
- (g) To acquire, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this Act;
- (h) To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, right-of-ways, property rights, easements and interests, as it may deem necessary for carrying out the provisions of this Act; provided, however, that except for parks and playgrounds and except for any property which may have been theretofore acquired under restrictions and limitations requiring payment of compensation, no compensation shall be paid for public lands, parkways or reservations so taken; and that all public property damaged in carrying out the powers granted by this Act, shall be restored or repaired and placed in its original condition as nearly as practicable; provided further, that the governing body having charge of any such public property is hereby authorized to give its consent to the use of any such property for a Turnpike Project; provided, further, that all property or interest so acquired shall be described in such a manner so as to locate the boundary line of same with reference to lot and block lines and corners of all existing and recorded subdivision properties and to locate the boundary line of other property with reference to survey lines and corners;[:]
- (i) To designate the location, and establish, limit and control such points of ingress to and egress from, each Turnpike Project as may be necessary or desirable in the judgment of the Authority and the <u>State Department of Highways and Public Transportation</u> [Texas Highway Department] to insure the proper operation and maintenance of such Project, and to prohibit entrance to such Project from any point or points not so designated; in[. In] all cases where county or other public roads are affected or severed, the Authority is hereby empowered and required to move and replace the same, with equal or better facilities; and all expenses and resulting damages, if any, shall be paid by the Authority;[-]
- (j) To make and enter into contracts and operating agreements with similar authorities or agencies of other states, including states in Mexico; to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Act; and to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgments, and to fix their compensation; provided, that all such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of this Act or from revenues; and provided further that no compensation for employees of Authority shall exceed the salary schedule of the State Department of Highways and Public Transportation [State Highway Department] for comparable positions and services;[-]

(k) To receive and accept grants for or in aid of the construction of any Turnpike Project, and to receive and accept aid or contributions from any source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(1) To make and enforce rules and regulations not inconsistent with

the provision of this Act for use of any such Project;

(m) All contracts of the Authority for the construction, improvement, repair, or maintenance of any turnpike project shall, in so far as applicable, be made and awarded under the same conditions, terms, requirements, and provisions as are now provided for with respect to contracts of the State Department of Highways and Public Transportation [State Highway Department] in Sections 8 and 9 of Chapter 186, pages 457, 458, Acts, Thirty-ninth Legislature, 1925[, as amended by Chapter 103, page 286, Acts, Forty-third Legislature, First Called Session, 1933,] and Sections 10 and 13 of Chapter 186, page 458, Acts, Thirty-ninth Legislature, 1925, codified as Articles 6674h, 6674i, 6674j, and 6674m, Vernon's Civil Statutes, and in the making and awarding of such contracts the Authority shall, in so far as applicable, be under the same duties and responsibilities with respect thereto as are now imposed upon the State Department of Highways and Public Transportation [State Highway Department] by the terms and provisions of the Statutes herein enumerated; it[-It] is hereby declared to be the intention of the Legislature that the

provision of this paragraph shall be mandatory;[-

[(n) Provided, however, that the Authority in this Act created, save and except for the region included within the boundaries of Dallas and Tarrant Counties of this State, shall not be empowered or authorized to process or commence plans for or the construction of any toll road or turnpike over the same route or parts thereof or between the same terminal or intervening cities or towns, or through any counties or regions served by a toll road corporation as hereinafter described, which could in any manner whatsoever be construed as a duplication of the services rendered by a toll road running in the same general directions over the same general route or part thereof or through the same regions or counties of the State which has been planned, commenced or constructed by a toll road corporation chartered prior to April 1, 1953, under the laws of this State which provides in its articles of incorporation, bylaws, or otherwise, that none of the net income or profits, whether realized or unrealized, shall ever inure to the benefit of or be distributed to any private shareholder or any other private person, association or corporation whatsoever, and that, after payment of all indebtedness for the acquisition, construction, maintenance and operation of such toll road, the title of all the assets of said toll road corporation shall be conveyed to the State of Texas or to the county or counties in which such toll road is situated; provided further, however, that such toll road corporation commence the construction of such toll road within a period of eighteen (18) months from the effective date of this Act.]

(n) [(o)] To do all acts and things necessary or appropriate to carry

out the powers expressly granted in this Act;

(o) To develop and implement policies that provide the public with a reasonable opportunity to appear before the Board to speak on any issue under the jurisdiction of the Authority; and

(p) To prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the Authority's programs

SECTION 10. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 8a to read as follows:

Sec. 8a. RELOCATION ASSISTANCE PROGRAM. (a) The Authority by rule shall adopt a relocation assistance program for property owners and tenants who are displaced from dwellings or places of business as the result of acquisition by the Authority of real property under this Act.

(b) The rules adopted under this section must include eligibility requirements for assistance under the program and must define the benefits available to those

eligible for assistance.

(c) At each public hearing held under Section 16a of this Act, the Authority shall make available to the public written copies of the program rules adopted by the Authority under this section.

SECTION 11. Section 9, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 9. TURNPIKE REVENUE BONDS. (a) The Authority is hereby authorized to provide by resolution, from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of a Turnpike Project, including all or any part of the cost of improving, extending, or enlarging a Turnpike Project. Each Project shall be financed and built by a separate issue of bonds. The proceeds of no issue of bonds shall be divided between or among two or more projects. The cost of each Project shall be determined and set up as a separate project and undertaking.
- (b) The principal of and the interest on such bonds shall be payable solely from the funds herein or otherwise provided by law for such payment and from the revenues of the particular project for which such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates authorized by law, [not exceeding five (5) per centum per annum] shall mature at such time or times, not exceeding forty (40) years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to in the proceeding authorizing the issuance of the bonds.
- (c) The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds shall be signed by the Chairman of the Authority, or shall bear his facsimile signature, and the official seal of the Authority or a facsimile thereof shall be impressed or printed thereon, and attested by the Secretary and Treasurer of the Authority. Any coupons attached thereto shall bear the facsimile signature of the Chairman of the Authority. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery:
- (d) All bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of, and are hereby declared to be and are constituted negotiable instruments under the negotiable instruments law of the State:
- (ec) The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. If the duty of such reconversion is imposed on the Trustee in a Trust Agreement as authorized under Section 11, the substituted coupon bonds need not

be reapproved by the Attorney General of Texas, and they shall remain incontestable.

(fe) The Authority may sell such bonds in such manner, either at public or at private sale, and for such price, as it may determine to be for the best interests of the Authority[, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five (5) per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds

prior to maturity].

(ge) The proceeds of the bonds of each issue shall be used solely for the payment of the Cost of the Turnpike Project for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such Cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the Cost of the Turnpike Project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

(hf) Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable or definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide without reapproval by the Attorney General, for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which

are specifically required by this Act.

(g) Notwithstanding any other provisions of this Act, (1) the following general laws of the State of Texas, being generally applicable to all public agencies of the State, shall be applicable to bonds issued by the Authority: Vernon's Ann. Tex. Civ. Statutes Articles 717k, 717k-2, 717k-6, 717k-8, and 717q, together with all amendments thereto, and (2) the provisions of Chapter 402, Acts of the 70th Legislature, Regular Session, 1987 (Vernon's Ann. Tex. Civ. Statutes Article 6674v-1) shall continue to be in full force and effect, and Local Government Entities, as defined therein, are authorized to issue bonds in aid of, and/or to enter contracts with the Authority and pledge revenues and/or taxes thereunder to pay principal and/or interest on bonds issued by the Authority with respect to, all or any portion of a Turnpike Project, all as permitted in said Article 6674v-1, and Turnpike Project bonds issued by the Authority may be payable from and secured by payments made pursuant to such contracts, and such bonds may state any such pledges and security on their faces, and (3) Turnpike Project bonds issued by the Authority additionally may be payable from and secured by funds derived from any other source available to the Authority other than those derived from a different Turnpike Project.

(ih) Before the Authority may deliver any bonds issued hereunder to the purchaser thereof, the proceedings authorizing their issuance and securing the bonds shall be presented to the Attorney General of Texas for examination and

approval. If the bonds shall have been duly authorized in accordance with the Constitution and laws of the State and constitute valid and binding obligations of the Authority, according to their tenor and effect, and proper charges against the revenues pledged to their payment, he shall approve the bonds. Without such approval the bonds cannot be so issued and delivered to the purchaser. The bonds when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration the bonds shall be incontestable. hereunder to the purchaser thereof, the proceedings authorizing their issuance and securing the bonds shall be presented to the Attorney General of Texas for examination and approval. If the bonds shall have been duly authorized in accordance with the Constitution and laws of the State and constitute valid and binding obligations of the Authority, according to their tenor and effect, and proper charges against the revenues pledged to their payment, he shall approve the bonds. Without such approval the bonds cannot be so issued and delivered to the purchaser. The bonds when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration the bonds shall be incontestable.

SECTION 12. Section 11, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 11. TRUST AGREEMENT. (a) In the discretion of the Authority any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State.
- (b) Any such trust agreement may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any Turnpike Project or any part thereof.
- (c) No trust agreement shall evidence a pledge of the revenues of any Project to any other purpose than (i) for the payment of the cost of maintaining, repairing and operating the Turnpike Project; (ii) and for the payment of the principal of and interest on such bonds as the same shall become due and payable; and (iii) to create and maintain reserves for such purposes, as prescribed in Section 12 hereof; and (iv) as otherwise provided by law. However, surplus revenues may be used for another Turnpike Project as authorized by Section 20b of this Act.
- (d) Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, expansion, maintenance, repair, operation and insurance of the Turnpike Project in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of such Turnpike Project.
- (e) It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority.
- (f) Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the Authority may deem reasonable and proper for the security of the bondholders.

(g) All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the Turnpike Project.

SECTION 13. Section 12, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as

follows:

Sec. 12. REVENUES. (a) The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each Turnpike Project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, or may lease or sell any part thereof, including the right-of-way adjoining the paved portion, for placing thereon gas stations, garages, stores, hotels, restaurants, or for any other purpose including [except] for tracks for railroad or railway use or[, and except] for use by telephone, telegraph, electric light or power lines and to fix the terms, conditions, rents and rates of charges for such use or the terms and conditions of such lease or sale.

(b) Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the Turnpike Project in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (1) [(a)] the cost of maintaining, repairing and operating such Turnpike Project and (2) [(b)] the principal of and the interest on such bonds as the same shall become

due and payable, and to create reserves for such purposes.

(c) Such tolls shall not be subject to supervision or regulation by any other

commission, board, bureau or agency of the State.

(d) The tolls and all other revenues derived from the Turnpike Project in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of such bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement.

(e) The revenues and disbursements for and on behalf of each Project shall be kept separately. No revenues of one Project shall be used to pay cost of another

Project, except as authorized by Section 20b of this Act.

(f) The moneys in the sinking fund, less such reserve as may be provided in such resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds at the redemption price then applicable.

SECTION 14. Section 12b, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended

to read as follows:

Sec. 12b. TEXAS TURNPIKE AUTHORITY FEASIBILITY STUDY FUND. (a) The Authority shall maintain [Any funds of the Dallas-Fort Worth Turnpike remaining on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion, after provision for transition expenses, debts, and obligations pursuant to Section 17a of this Act shall be deposited by the authority in] a fund which shall be entitled "Texas Turnpike Authority Feasibility Study Fund." [No more than One Million Dollars shall be so deposited on such

date. The amount deposited shall be reduced by the cost of feasibility studies, if any, requested by the authority and approved by the State Highway and Public Transportation Commission between April 4, 1977, and the date of such deposit.] Such fund shall be a revolving fund held in trust by a banking institution chosen by the authority separate and apart from the funds of any project.

(b) The Authority may transfer an amount from a surplus fund established for a turnpike project to the feasibility study fund. However, the Authority may not transfer an amount that results in a balance in the surplus fund that is less than the minimum balance required by the trust agreement for that project, if any.

- [No funds from any other existing, presently constructed project shall be added to this fund.] The feasibility study [Such] fund shall be used for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of any new turnpike project; the financing of the improvement, extension, or expansion of an existing turnpike project; and private participation, as authorized by Section 20(a) of this Act, in the financing of a new turnpike project, the refinancing of an existing project, or the improvement, extension, or expansion of a turnpike project. All such studies [the study of which thereafter] shall be authorized by the Texas Turnpike Authority, subject to the prior approval of the State Highway and Public Transportation Commission. The funds expended from this fund on behalf of any [such new] project shall be regarded as a part of the cost of such [new] project, and the feasibility study [said] fund shall be reimbursed out of the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the construction, improvement, extension, expansion, or operation of the [of any such additional] project.
- (d) [After this Act is signed by the governor, all money reimbursable from the sale of bonds of projects whose studies and other expenses have been advanced from funds of the Dallas-Fort Worth Turnpike shall be reimbursed to this fund for use as a part hereof.] For the same purposes, the Authority [authority] may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of this fund, pledging or hypothecating thereto any sums therein or to be placed therein.
- (e) In addition to the above, any municipality or group of municipalities, any county or group of counties, or any combination of municipalities and counties, or any private group or combination of individuals within the state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a new turnpike project, the improvement, extension, or expansion of an existing project, or the use of private participation under Section 20a of this Act. The funds expended on behalf of any [new] project shall be regarded as part of the cost of such [new] project and, with the consent of the Texas Turnpike Authority, shall be reimbursable to the party paying the expenses out of the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the construction, improvement, extension, expansion, or operation of such [new] project.

SECTION 15. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 16b to read as follows:

Sec. 16b. ENVIRONMENTAL REVIEW. (a) The Authority shall adopt rules providing for environmental reviews of turnpike projects. The rules must contain provisions for:

(1) public comment on environmental reviews of turnpike projects, including the types of projects for which public hearings are required;

(2) the environmental factors and impacts the Authority will evaluate in its environmental reviews; and

(3) environmental review of alternate routes for a proposed turnpike

project.

(b) A rule adopted under Subsection (a)(1) of this section must provide a procedure for a public hearing to be requested on an environmental review for which a public hearing is not required.

(c) An environmental review provided by a rule adopted under this section must be conducted before the location or alignment of the turnpike project has been

adopted.

(d) At least once every five years, the Authority shall, after a public hearing, review the existing environmental review rules and make appropriate changes.

(e) Each environmental review conducted under the rules adopted under this section must be approved by the State Highway and Public Transportation Commission before construction of the turnpike project begins.

SECTION 16. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section

20a to read as follows:

Sec. 20a. PRIVATE PARTICIPATION IN PROJECTS. (a) The authority may enter into agreements to construct, maintain, repair, or operate Turnpike projects, with any person, corporation, or entity. Such agreements may be made independently or jointly with the Authority. The Authority may authorize the investment of private funds, including debt and equity participation, as a means for financing all or any of the above functions. The investors are entitled to the return of the amount invested and a profit on that investment not to exceed twenty-five percent (25%) as determined by rules of the Authority. The investors may not participate in decisions regarding the operation of the Authority.

(b) In the construction, maintenance, repair, and operation of any new turnpike project and the extension and expansion of any existing turnpike project by invested private funding, the Authority may use exclusive development agreements with private entities in which the Authority shall have broad latitude to negotiate the terms and conditions for the methods and types of financing and in which it may combine and negotiate any or all professional and consulting services and construction, operation, and maintenance of such turnpike projects.

(c) Every turnpike project that is the subject of a development agreement with a private entity at all times is, and all the facilities acquired or constructed thereon are, public property and belong to the Authority. However, the Authority may enter into agreements that include provisions for the leases of rights-of-way, for ownership of improvements, for the granting of easements, and for the issuance of franchises, licenses, permits, or any lawful uses to enable a private entity to construct, to operate, and to maintain turnpike projects and extensions, enlargements, and improvements that supplement an existing turnpike project. At the termination of any such agreements, the turnpike project and all facilities shall be in a state of proper maintenance as determined by the Authority and returned to the Authority in satisfactory condition at no further cost.

(d) The Authority shall not incur any financial obligations for a private entity that constructs, maintains, or operates a turnpike project; and neither the State, the Authority, nor any political subdivision of the State shall be liable for any financial or other obligations of any turnpike project solely because of its being constructed,

financed, or operated in whole or in part by a private entity.

(e) The Authority is responsible for negotiating in every turnpike project in which private entities are participants the terms and conditions of private participation that include:

(1) methods of determining applicable costs, profits, and project distributions between all private equity investors and the Authority;

(2) reasonable methods for determining and classifying toll rates;

(3) acceptable safety and policing standards; and

(4) all other professional, consultant, construction, operation, and

maintenance standards, expenses, and costs applicable.

- (f) The Authority shall establish, administratively, the rules, procedures, and guidelines that govern the negotiating process with the intention of promoting fairness, of obtaining numbers of private participants in turnpike projects, and of promoting confidence among such participants. The rules concerning the negotiations shall contain criteria for qualifications of the participants and for the award of the contracts, and the Authority shall maintain updated procedures concerning participation in negotiations for all such projects. Agreements are to be upon terms determined by the exclusive judgment of the Authority. The Authority shall include the Attorney General or his designee in the negotiations with private participants.
- (g) The Authority, acting alone or jointly with private entities, also may enter agreements with other governmental agencies and entities including, but not limited to, federal agencies, state agencies of this and other states including states in Mexico, political subdivisions, and municipalities, to provide services, to study feasibility of projects, to finance, to construct, to operate, and to maintain turnpike projects pursuant to the other terms of this chapter.
- (h) Nothing in this section shall require the Attorney General to approve the legal counsel for any participant other than the legal counsel which represents the authority."
- SECTION 17. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 20b to read as follows:
- Sec. 20b. USE OF SURPLUS REVENUES. The Board may use or pledge the surplus revenues of a turnpike project for the payment of costs, including the principal of or interest on bonds, of another turnpike project other than a project financed under Section 20a of this Act under terms, conditions, or pledges made by resolution of the Board. However, the Board may not take an action under this section that violates, impairs, or is inconsistent with the provisions of a bond resolution, trust agreement, or indenture governing the use of the surplus revenues.

SECTION 18. Section 21, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

- Sec. 21. MISCELLANEOUS. (a) Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.
- (b) All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.
- (c) All counties, cities, villages and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real

property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

(d) An action by the Authority may be evidenced in any legal manner,

including a resolution adopted by its Board of Directors.

[If the Authority employs a general counsel, the counsel shall be prohibited from lobbying for the Authority, and no member of the Authority shall engage in activities requiring registration as a lobbyist under Chapter 305, Government Code.]

- (e) Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars (\$1,000).
- (f) Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars (\$100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid.
- (g) The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

SECTION 19. Section 21b, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended

by adding Subsection (d) to read as follows:

(d) The authority shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the authority during the preceding year. The annual report must be in the form provided by the General Appropriations Act.

SECTION 20. Section 21c, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended

to read as follows:

- Sec. 21c. CONSULTANTS. (a) The Authority [authority] is subject to Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), relating to the use of consultants.
- (b) The Authority by rule shall adopt a policy and procedures for soliciting proposals for contracts for professional consulting services. The policy and procedures must encourage the submission of proposals from various firms, which the Authority shall review before selecting a firm.
- SECTION 21. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 21d to read as follows:
- Sec. 21d. LEGAL COUNSEL. (a) Except as provided by this section, the Authority may not contract for, or otherwise secure, private legal counsel without the approval of the Attorney General.
- (b) The Authority must submit a request to the Attorney General for approval of private legal counsel in the manner required by the Attorney General. Before the Authority requests the approval, the Authority must obtain and evaluate information regarding the affirmative action policies and practices of the legal counsel. That evaluation must be included in the request.
- (c) Not later than the 30th day after the date the Attorney General receives a request for approval under this section, the Attorney General shall notify the Authority of the approval or denial of the request. If the Attorney General fails to

notify the Authority on or before that date, the Authority may contract for, or otherwise secure, the legal counsel of its choice.

(d) The Authority may employ an attorney as a member of the staff of the

Authority without the approval of the Attorney General.

SECTION 22. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 24 to read as follows:

- Sec. 24. DISADVANTAGED BUSINESSES. (a) The Board shall establish a disadvantaged business program consistent with the General Appropriations Act and general law.
- (b) The Authority shall set and strive to meet annual goals for the awarding of contracts to disadvantaged businesses.
- (c) The Authority shall attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the Authority. The Authority shall give disadvantaged businesses full access to the contract bidding process. The Authority shall inform and offer assistance to disadvantaged businesses regarding the Authority's contract bidding process. To further the assistance effort, the Authority shall identify barriers to participation by disadvantaged businesses in the Authority's bidding process.

(d) This section does not exempt the Authority from competitive bidding

requirements provided by law.

- SECTION 23. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Section 25 to read as follows:
- Sec. 25. PUBLIC COMPLAINTS. (a) The Board shall prepare information of public interest describing the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the public and appropriate state agencies.

(b) The Board shall keep an information file about each complaint filed with

the Board that the Board has authority to resolve.

(c) If a written complaint is filed with the Board that the Board has authority to resolve, the Board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 24. Article 6665, Revised Statutes, is amended to read as follows:
Art. 6665. MEETINGS; STATE PLAN; ACCOUNTING
[ORGANIZATION]. (a) The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may

provide by rule or the chairman may call.

- (b) The Commission [They] shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. In formulating those plans and policies, the Commission shall consider, for incorporation into the state highway system, turnpikes that other governmental or private entities are authorized to construct. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Engineer-Director for Highways and Public Transportation [Highway Engineer].
- (c) A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection.

SECTION 25. Article 6674v-6, Revised Statutes, is amended to read as follows:

Art. 6674v-6. COMMISSION APPROVAL OF TOLL ROAD <u>PROJECTS</u> AND <u>REVIEW OF</u> BONDS. (a) A governmental or private entity, other than a

county with a population of more than 2.4 million, may not begin construction of a toll road or turnpike without the approval of the State Highway and Public Transportation Commission if the toll road or turnpike is to become a part of the state highway system. When deciding whether to approve a proposed toll road or turnpike project, the commission shall consider:

(1) the feasibility of effectively integrating the toll road or turnpike

into the state highway system; and

(2) the ability of the State Department of Highways and Public Transportation to construct any connecting roads necessary for the toll road or turnpike to generate sufficient revenue to pay the debt incurred for its construction.

- (b) Any [toll road project and the] bonds of a county, municipality, or political subdivision (other than a county with a population greater than 2,100,000 according to the preceding federal census) or any nonprofit corporation acting on behalf of a county, municipality, or political subdivision, payable in whole or in part from revenues derived from the ownership or operation of a toll road or turnpike must be reviewed by the State Highway and Public Transportation Commission.
- (c) The Commission [That commission] is authorized to contract with the Texas Turnpike Authority to review on its behalf any toll road project or any toll road bonds proposed pursuant to this section, other than a project of the Authority, and to make recommendations to the Commission. The Texas Turnpike Authority is authorized to perform such review and analysis and to make recommendations as described herein to the Commission.
- (d) The bonds or other debt obligations of any county, municipality, or political subdivision approved and issued pursuant to this Act shall never be considered obligations of the State of Texas and remain obligations of the issuing entities.

SECTION 26. Section 7, Chapter 304, Acts of the 50th Legislature, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. Except as provided by Article 6674v-6, Revised Statutes, the [The] powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided, however, that nothing in this Section shall be construed to prevent the State Highway and Public Transportation Commission from operating and maintaining the project or contributing to the cost of such operation and maintenance under such provisions as may be agreed to by the county which are not inconsistent with the rights of bondholders or the rights of any agency, person, firm or corporation then operating the project under lease or contract with the county. The State Highway and Public Transportation Commission shall have authority without further legislative enactment to make such provision for and contributions toward operation and maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway and Public Transportation Commission, free of tolls.

SECTION 27. The following laws are repealed:

- (1) Chapter 11, Title 32, Revised Statutes; and
- (2) Sections 17, 17a, and 28, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes).

SECTION 28. (a) The repeal by this Act of Chapter 11, Title 32, Revised Statutes, does not affect the existence of a corporation incorporated under that chapter before the effective date of this Act. After the repeal, the corporation continues to exist as a corporation under the laws of this state and has the same rights and powers that it had immediately before the repeal. The former law is continued in effect for this purpose.

(b) The repeal of Chapter 11, Title 32, Revised Statutes, shall have no effect on the power and authority of a transportation corporation, created pursuant to Chapter 27, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 1528l, Vernon's Texas Civil Statutes), as amended, to exercise the powers of Chapter 11, Title 32, Revised Statutes, which were granted by Section 16B, Chapter 1241, Acts of the 71st Legislature, Regular Session, 1989 (Article 1528l, Vernon's Texas Civil Statutes), and such corporations shall continue to be authorized to exercise such powers.

SECTION 29. (a) The board of directors of the Texas Turnpike Authority existing immediately preceding September 1, 1991, is abolished on that date and a new board of directors is created in accordance with Section 3, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), as amended by this Act. The governor shall appoint six members to the new board. The initial appointed members shall draw lots to determine which two shall serve for initial terms expiring February 15, 1993, which two for initial terms expiring February 15, 1995, and which two for initial terms expiring February 15, 1997. The prior board continues to act as the board of directors of the authority until a majority of the newly appointed members have qualified for office.

(b) The creation of the new board of directors of the Texas Turnpike Authority does not affect the validity of any action taken by or pursuant to the direction of the prior board. Rules adopted by the prior board of directors remain in effect until superseded by rules of the new board.

SECTION 30. The change in law made by Sections 17 and 26 of this Act applies only to a toll road or turnpike project for which bonds are issued on or after September 1, 1991.

SECTION 31. The first policy statement required to be filed under Section 4d(d), Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 32. This Act takes effect September 1, 1991.

SECTION 33. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 549 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 549, Relating to the punishment of persons convicted of certain offenses committed for the benefit of, at the direction of, or in association with a criminal street gang.

The bill was read second time.

and

Senator Montford offered the following amendment to the bill:

- (1) Amend C.S.H.B. 549 by striking all below the enacting clause and substituting in lieu thereof the following:
- SECTION 1. TITLE 11, Chapter 71, Penal Code, is amended to read as follows:
 - TITLE 11. ORGANIZED CRIME AND CRIMINAL GANG ACTIVITY
- Sec. 71.01. Definitions. In this chapter, (a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:
 - (1) participants may not know each other's identity;
 - (2) membership in the combination may change from time to time;
- (3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.
- (b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.
- (c) "Criminal Gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who associate in the commission of criminal activities.
- (d) "Criminal Gang Activity" is conduct committed by a member of a criminal gang in furtherance of the purpose of the criminal gang and which otherwise constitutes an offense proscribed by the Penal Code.
- (c)(e) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 of this code.
- Sec. 71.02. Engaging in Organized Criminal Activity Crime and Criminal Gang Activity. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:
- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, or forgery;
 - (2) any felony gambling offense;
- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
- (4) unlawful manufacture, transportation, repair or sale of firearms or prohibited weapons;
- (5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery fraud, misrepresentation, or deception:

- (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
- (7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance; or
 - (8) any felony offense under Chapter 32, Penal Code;
 - (9) any offense under Chapter 36, Penal Code; or
 - (11) any other offense committed in furtherance of the nurses
- (11) any other offense committed in furtherance of the purpose of the criminal gang.

(b) A person commits an offense under Section 71.01 (d), if he knowingly

engages in criminal gang activity.

- (b)(c) Except as provided in Subsection (c) (d) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (8)(11) of Subsection (a) or of the most serious offense under subsection (b) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.
- (c)(d) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (8)(11) of Subsection (a) of this section that the person conspired to commit.

SECTION 2. Section 12, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

- Sec. 12. DETENTION AS A CONDITION OF PROBATION. When a court having jurisdiction of a misdemeanor case grants probation to the defendant, the court may require as a condition of probation that the defendant submit to a period of detention in a county jail or community corrections facility to serve a term of imprisonment not to exceed 30 days and serve up to 100 hours of community service. In a felony case the court may require as a condition of probation that the defendant submit to a period of detention in a county jail to serve a term of imprisonment not to exceed 180 days. When probation is granted to a defendant convicted of an offense under section 7.02, Penal Code the Court shall require as a condition of probation that the defendant submit to 180 days detention in the county jail or community corrections facility and serve up to 200 hours of public service in addition to any other penalty prescribed by law.
- SECTION 3. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.
- (b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 4. This Act takes effect September 1, 1991.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Montford and by unanimous consent, the amendment was withdrawn.

Question—Shall the bill be passed to third reading?

On motion of Senator Ellis and by unanimous consent, further consideration of the bill was postponed.

MOTION TO PLACE HOUSE BILL 2882 ON SECOND READING

Senator Lyon moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2882, relating to the authority of the Texas Board of Criminal Justice to manage inmate population at the institutional division during emergency overcrowding situations.

On motion of Senator Lyon and by unanimous consent, the motion to suspend the regular order or business was withdrawn.

HOUSE BILL 1496 ON SECOND READING

On motion of Senator Rosson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1496, Relating to the criminal penalties provided for illegal dumping from a motor vehicle in violation of a law or ordinance.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1496 ON THIRD READING

Senator Rosson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1496 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 451 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 451, Relating to the definition, safety, reporting, certification, and regulation of certain aggregate quarries and pits; providing civil penalties.

The bill was read second time.

Senator Sims offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend H.B. 451 by adding a new Section 133.087 to read as follows: Compliance with this Act shall be admissible as evidence in any legal proceeding.

The committee amendment was read and was adopted by a viva voce vote.

Senator Sims offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend H.B. 451, SECTION 1, CHAPTER 133, SUBCHAPTER A., Section 133.003, subsection 21, by striking all of subsection (21) and inserting in lieu thereof the following:

(21) "Quarry" means the site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation,

stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

The committee amendment was read and was adopted by a viva voce vote. Senator Sims offered the following committee amendment to the bill:

Committee Amendment No. 3

Amend H.B. 451, SUBCHAPTER C-1. INITIAL REPORTING REQUIREMENTS. Sec. 133.031 as follows:

Sec. 133.031. REPORT OF ABANDONED OR INACTIVE QUARRY OR PIT.

- (a) On or before March 1, 1992, [December 1, 1991,] the person responsible for an abandoned quarry or pit shall report to the commission.
- (b) On or before March 1, 1992, [December 1, 1991,] the person responsible for a quarry or pit that became inactive before January 1, 1991 and did not resume operations before June 30, 1991, shall report to the commission.
- (c) If the person responsible for reporting a quarry or pit under this section is unknown or cannot be found, the commissioners court of the county in which the quarry or pit is located shall report to the commission on or before March 15, 1992. [December 15, 1991.]

The committee amendment was read and was adopted by a viva voce vote. Senator Sims offered the following committee amendment to the bill:

Committee Amendment No. 4

Amend H.B. 451, Sec. 133.003. DEFINITIONS, subsection (27) to read as follows:

- "(27) Unacceptable unsafe location" means a condition where the edge of a pit is located within 200 feet of a right-of-way intersection with a public road in a manner which, in the judgment of the Commission:
- (a) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and,
- (b) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,
- (c) until the opinion of the Commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails or other devices as prescribed by this code."

The committee amendment was read and was adopted by a viva voce vote.

Senator Sims offered the following committee amendment to the bill:

Committee Amendment No. 5

Amend H.B. 451, Sec. 133.001. DEFINITIONS, by striking lines 9-13, page 2 and inserting the following:

(2) "Aggregates" includes any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface including

dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, rip-rap, or other non-mineral substance.

The committee amendment was read and was adopted by a viva voce vote.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

- 1. Amend H.B. 451, Section 1, Chapter 133, Subchapter A, Section 133.003 by striking all of subsection (18) and renumbering all subsequent subsections.
- 2. Amend H.B. 451, Section 1, Chapter 133, Subchapter A, Section 133.003 by striking the words "or primary governmental entity" from subsection (23).
- 3. Amend H.B. 451, Section 1, Chapter 133, Subchapter C, Section 133.021 by striking the words "primary governmental entity" from subsection (1) and substituting the word "owner".
- 4. Amend H.B. 451, Section 1, Chapter 133, Subchapter C-1, Section 133.031 by striking all of subsection (c).

The amendment was read and was adopted by a viva voce vote.

Senator Dickson offered the following amendment to the bill:

Floor Amendment No. 2

Amend H.B. 451, Section 1, Chapter 133, Subchapter E, by adding a new Section 133.087 to read as follows:

Section 133.087 - County Liability. The provisions of this act shall not be construed to impose any liability upon a county, its officers or employees.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 451 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B.** 451 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Harris of Dallas in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 765 ON SECOND READING

Senator Parker asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 765, Relating to grand jury proceedings.

There was objection.

Senator Parker then moved to suspend the regular order of business and take up C.S.H.B. 765 for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Leedom, Lucio, Moncrief, Parker, Ratliff, Rosson, Sibley, Zaffirini.

Nays: Brown, Dickson, Krier, Lyon, Montford, Sims, Tejeda, Truan, Turner, Whitmire.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Amend C.S.H.B. 765 to add SECTION 3, and renumber all remaining sections as necessary, as follows:

SECTION 3. Article 20.16 of the Code of Criminal Procedure is amended to read as follows:

Art. 20.16 Oaths to Witnesses

The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated: "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." Any witness or attorney for a witness who divulges any matter about which the witness [he] is interrogated, or any proceedings of the grand jury had in his presence, other than when required to give evidence thereof in due course, shall be liable to a fine for contempt of court, not exceeding \$500, and to imprisonment not exceeding six months.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by the following vote: Yeas 17, Nays 14.

Yeas: Bivins, Brooks, Carriker, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Lucio, Moncrief, Parker, Rosson, Sibley, Zaffirini.

Nays: Armbrister, Barrientos, Brown, Dickson, Krier, Leedom, Lyon, Montford, Ratliff, Sims, Tejeda, Truan, Turner, Whitmire.

HOUSE BILL 2699 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2699, Relating to apportionment of the state into representative districts.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2699 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2699** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

BILLS SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills:

H.B.	41	H.B. 877	H.B. 1846	H.B. 2336
H.B.	220	H.B. 889	H.B. 1859	H.B. 2338
H.B.	289	H.B. 1050	H.B. 1973	H.B. 2368
H.B.	319	H.B. 1079	H.B. 1979	H.B. 2404
H.B.	356	H.B. 1144	H.B. 2046	H.B. 2429
H.B.	378	H.B. 1147	H.B. 2056	H.B. 2494
H.B.	493	H.B. 1186	H.B. 2136	H.B. 2556
H.B.	529	H.B. 1188	H.B. 2144	H.B. 2563
H.B.	553	H.B. 1207	H.B. 2195	H.B. 2595
H.B.	555	H.B. 1356	H.B. 2214	H.B. 2667
H.B.	629	H.B. 1392	H.B. 2224	H.B. 2817
H.B.	754	H.B. 1431	H.B. 2250	H.B. 2830
H.B.	799	H.B. 1463	H.B. 2263	H.B. 2834
H.B.	813	H.B. 1630	H.B. 2266	H.B. 2837
H.B.	844	H.B. 1809	H.B. 2327	H.B. 2841

MESSAGE FROM THE HOUSE

House Chamber May 25, 1991

HONORABLE BOB BULLOCK PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 31, Relating to apportionment of the state into senatorial districts.

Respectfully submitted,

BETTY MURRAY, Chief Clerk House of Representatives

SENATE RULE 11.11 SUSPENDED

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider H.B. 2898 today.

(President in Chair)

RECESS

On motion of Senator Brooks, the Senate at 12:24 p.m. took recess until 2:00 p.m. today.

AFTER RECESS

The Senate met at 2:00 p.m. and was called to order by the President.

PERMISSION TO MEET GRANTED

On motion of Senator Glasgow and by unanimous consent, the Committee on State Affairs was granted permission to meet while the Senate was in session.

HOUSE CONCURRENT RESOLUTION 212 WITHDRAWN FROM COMMITTEE

On motion of Senator Brooks and by unanimous consent, H.C.R. 212 was withdrawn from the Committee on State Affairs.

HOUSE CONCURRENT RESOLUTION 212 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading:

H.C.R. 212, Requesting President Salinas de Gortari to return or loan to the State of Texas the Alamo Flag as a gesture of goodwill.

The resolution was read second time and was adopted by a viva voce vote.

SENATE RULE 7.23(b) SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 7.23(b) was suspended as it relates to the House amendment to S.B. 977.

SENATE BILL 977 WITH HOUSE AMENDMENT

Senator Brooks called S.B. 977 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Oakley

Amend S.B. 977 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the further development of the fish farming industry, including the licensing of vehicles used in fish farming operations, licenses required for selling fish, and the availability of water used in fish farming.

SECTION 1. Section 1.203, Parks and Wildlife Code, amended to read as follows:

Sec. 1.203. Agency Review of Aquaculture Rules

Each state agency that regulates persons involved with aquaculture shall review the agency's rules regarding aquaculture biennially to determine whether changes in the rules are necessary as a result of new developments in aquaculture technology. [The aquaculture executive committee with the advise of the department shall adopt rules to ensure that fish-farming operations do not have a negative impact on the existing marine or biological ecosystems:]

SECTION 2. Section 1,204, Parks and Wildlife Code, is amended to read as follows:

Sec. 1.204. Advisory Committee [Suspension of License] (a) An advisory committee to study the environmental and economic impact of the aquaculture industry in this state is composed of one member licensed as required by Section 134.011, Agriculture Code, appointed by each member of the aquaculture executive committee, one member appointed by the chairman of the board of the Texas Department of Commerce to represent the Department, and one member

appointed by the governor to represent the governor's office for economic development.

- (b) Members of the advisory committee serve at the will of the appointing officer. A member of the advisory committee is not entitled to compensation for service on the advisory committee but is entitled to reimbursement for actual expenses incurred in performing duties as a member of the advisory committee, subject to limitations provided by the General Appropriations Act. committee, subject to limitations provided by the General Appropriations Act. [If the aquaculture executive committee determines that a particular fish-farming operation has violated a rule adopted under Section 1.203 of this code, the Department of Agriculture shall suspend the license of that fish-farming operation until the committee issues a notice approving the continuation of the fish-farming operation.]
- SECTION 3. Section 1.205, Parks and Wildlife Code, is amended to read as follows:
- Sec. 1.205. Grants and Gifts to the Aquaculture Industry [Employment of Officer] The aquaculture executive committee may accept grants and gifts from public and private sources for purposes of state coordination of the aquaculture industry.
- [(a) The aquaculture executive committee shall employ an aquaculture liaison officer to perform the duties listed in Section 1.206 of this code.] liaison officer to perform the duties listed in Section 1.206 of this code.]
- [(b) The committee shall set the salary of the officer. The department, the Department of Agriculture, and the General Land Office shall each provide one-third of the salary of the officer.]
 - [(c) The officer serves at the pleasure of the committee:]
- SECTION 4. Section 47.009, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:
- (a) Except as provided by Subsection (c) of this section, no [No] person may engage in business as a wholesale fish dealer unless he has obtained a wholesaler fish dealer's license.
- (c) A person who has a fish farming license under Section 134.011, Agriculture Code, is not required to obtain or possess a wholesale fish dealer's license if the person's business activities with regard to the sale of fish involve fish raised on the person's fish farm only.
- SECTION 5. Section 47.011, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:
- (a) Except as provided by Subsection (c) of this section no [No] person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.
- (c) A person with a fish farming license under Section 134.011, Agriculture Code, is not required to obtain or possess a retail fish dealer's license if the person's business activities with regard to the sale of fish involve fish raised on the person's fish farm only.
- SECTION 6. Section 47.0111, Parks and Wildlife Code, is amended to read as follows:
 - 47.0111 Purchase of Aquatic Products by Retail Fish Dealers.

No retail fish dealer may purchase for resale or receive for sale, barter, exchange, or any other commercial purposes any aquatic products [fish] from any person or entity in this state unless he purchases the product [fish] from the holder of:

- (1) a wholesale fish dealer's license;
- (2) a general commercial fisherman's license; or

(3) a fish farmer's [a shrimp house operator's] license.

SECTION 7. Section 47.012, Parks and Wildlife Code, is amended to read as follows:

47.012 Purchase of <u>Aquatic Products</u> [Fish] by Restaurant, Owner, Operator, or Employee.

No restaurant owner, operator, or employee may purchase for consumption by the restaurant's patrons on the restaurant's premises any <u>aquatic product</u> [fish] from any person or entity in this state unless the person purchases the <u>aquatic product</u> [fish] from the holder of:

(1) a wholesale fish dealer's license;

(2) a general commercial fisherman's license; or

(3) a fish farmer's [shrimp house operators] license.

SECTION 8. Section 47.013, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

- (a) Except as provided by Subsection (c) of this section, a [A] person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.
- (c) a person who owns a vehicle licensed under Section 134.012, Agriculture code, is not required to obtain a license for the vehicle under this section when the vehicle is used with regard to the sale or transportation of only aquatic products raised on a fish farm belonging to the owner of the vehicle.

SECTION 9. Chapter 134, Agriculture Code, is amended to read as follows:

CHAPTER 134, Agriculture Code, is amended to read as follows:

CHAPTER 134. REGULATION OF AQUACULTURE [FISH FARMS AND CULTURED FISH PROCESSING PLANTS]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001 DEFINITIONS. In this chapter:

- (1) "Cultured <u>species</u> [fish]" means <u>aquatic plants or animals raised</u> under conditions where at least a portion of their life-cycle is controlled by an aquaculturist [farm-raised fish or shellfish].
- (2) "Exotic [fish] species" means a nonindigenous <u>plant or animal</u> [fish or shellfish species that is] not normally found in the <u>public waters</u> [water] of <u>this</u> [the] state.

(3) "Aquaculturist or fish farmer" means any person licensed under

this chapter to engage [engaged] in aquaculture or fish farming.

- (4) "Aquaculture or Fish farming" means the business of producing[; propagating, transporting, possessing,] and selling cultured species [fish] raised in private facilities [a private pond, but does not include the business of producing, propagating, transporting, possessing, and selling cultured fish propagated for bait purposes]. Aquaculture or fish farming is an agricultural activity.
- (5) "Private facility [pond]" means a pond, tank, cage, [reservoir, vat,] or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water [fish in confinement wholly within or on the enclosed land of an owner, lessor, or lessee].
- (6) "Owner" means an aquaculturist operating a facility [a fish farmer] licensed by the department.

Sec. 134.002. <u>AQUACULTURE</u> [FISH FARM] PROGRAM. The department shall establish an <u>aquaculture</u> [a fish farm] program that:

- (1) develops and conducts a plan for promoting aquaculture [fish farm] products;
 - (2) licenses and regulates <u>aquaculture</u> [fish-farming] operations;
 - (3) [licenses and regulates cultured fish-processing plants;]
- [(4)] provides technical assistance, including demonstrations, to aquaculturists [fish farmers];

- (4) [(5)] provides coordinated support through colleges and universities and other governmental entities;
- (5) [(6)] solicits financial support from the federal government for the aquaculture [fish farm] industry;

(6) [(7)] develops and expands the aquaculture [fish farm] industry

to:

(A) stimulate the state's economy; and

(B) offer alternative crop opportunities; and

(7) [(8)] performs other functions and activities as required by law.

Sec. 134.003. PROGRAM ADMINISTRATOR; STAFF.

(a) The department shall [may] designate a person to administer the

aquaculture [fish farm] program.

(b) The department or the program administrator may employ the necessary staff to carry out the functions and duties of the department under this chapter.

Sec. 134.004. CONTRACTS. The department may contract with <u>state</u>, federal, or private entities [the General Land Office, the Parks and Wildlife Department, and the Texas Agricultural Extension Service] for assistance in carrying out the purposes of this chapter.

Sec. 134.005. RULES.

(a) The department shall adopt rules to carry out the <u>aquaculture</u> [fish farm] program.

(b) The rules may not conflict with rules issued under Section 134.020

of this code.

Sec. 134,006. AQUACULTURE [FISH FARM] FUND.

(a) The aquaculture [fish farm] fund is established in the state treasury.

(b) The department shall deposit to the credit of the fund the fees received from licenses issued under this chapter.

(c) The <u>aquaculture</u> [fish farm] fund may be used only to administer this chapter.

SUBCHAPTER B. AQUACULTURE LICENSE [FISH FARMS]

Sec. 134.011 AQUACULTURE [FISH FARMER'S] LICENSE REQUIRED. A person may not operate an aquaculture facility [be a fish farmer] without first having acquired from the department an aquaculture [fish farmer's] license.

Sec. 134.012. FISH FARM VEHICLE LICENSE REQUIRED.

(a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and

operated by the holder of [a fish farmer's] an aquaculture license

Sec. 134.013. BILL OF LADING REQUIRED [FOR CERTAIN VEHICLES] A person operating a vehicle [from which no fish sales are made;] transporting fish regulated by a bag, possession, or size limit and prohibited from sale if taken from the public waters of this state [cultured fish from a fish farm] shall carry a bill of lading that shows the number and species [of cultured fish] carried, the name of the owner and the location and license number of the aquaculture facility [fish farm] from which the species [fish] were transported, and the destination of the cargo.

Sec. 134.014 LICENSE FEES. The department shall issue an aquaculture [a fish farmer's] license or a fish farm vehicle license on the payment of a fee, in an

amount set by the commissioner, not to exceed \$100.

Sec. 134.015. FORM, DURATION AND RENEWAL OF LICENSE.

- (a) An aquaculture [a fish farmer's license and a fish farm vehicle] license must be on a numbered form provided by the department.
- (b) A license is valid for two years after the date of issuance. The department shall renew a license on submission by the licensee of a completed application and a renewal fee in an amount set by the commissioner, not to exceed \$100. [under Subsection (c) of this section] unless the department determines that the licensee has violated this chapter or a rule adopted under this chapter.
- (c) [The department shall establish by rule a graduated renewal fee schedule designed to recover an amount that, when added to the fees collected under Section 134.014 of this code, is sufficient to administer this subchapter. The fee schedule shall be based on the gross receipts from the sale of cultured fish sold by a licensee during the first 21 months of the period covered by the expiring license. The fee schedule shall require that licensees having a relatively large amount of gross receipts pay the highest fee.]
- [(d)] The department may [shall] suspend [a] an aquaculture license if it is determined that the licensee has violated this chapter or a rule adopted under this chapter [the aquaculture executive committee makes a determination as provided by Section 1.204, Parks and Wildlife Code].

Sec. 134.016. RECORDS. The holder of <u>an aquaculture</u> [a fish farmer's] license shall maintain a record of [the] sales [and shipments] of cultured <u>species</u>, regulated by a bag, possession, or size limit for a period of time of not less than one year [fish]. The record is open for inspection by designated employees of the department <u>during normal business</u> hours.

Sec. 134.017. CULTURE [HARVESTING] AND SALE OF CULTURED SPECIES [FISH]. Cultured species [fish] of any kind, size, or number may be raised, possessed, transported and sold anywhere, at any time, to any person and for any purpose by the holder of an aquaculture license unless prohibited by Parks and Wildlife Code or regulation [size from a fish farm may be harvested and sold at any time and in any county].

Sec. 134.019. MARKETING OF CULTURED REDFISH AND CULTURED SPECKLED SEA TROUT.

- (a) The commissioner shall adopt rules providing for the raising, sale, transportation, and possession of cultured redfish and culture speckled sea trout raised by an aquaculturist [a fish farmer] licensed under this chapter.
- (b) The rules shall provide for and require the identification of cultured redfish and cultured speckled sea trout raised by an aquaculturist [a fish farmer] under this chapter.

Sec. 134.020. EXOTIC [FISH] SPECIES.

- (a) The Parks and Wildlife Commission shall adopt rules regulating the importation, possession, propagation, and sale of harmful or potentially harmful exotic [fish] species by an aquaculturist [a fish farmer].
- (b) The Parks and Wildlife Commission, after consulting with the commissioner and an individual designated by the chairman of the board of regents of The Texas A&M University System, shall determine and publish a list of harmful or potentially harmful exotic [fish] species that an aquaculturist [a fish farmer] may not import, possess, or sell as part of the person's aquaculture [fish-farming] activities.
- (c) An aquaculturist [a fish farmer] may not release in public water harmful or potentially harmful exotic [fish] species except as provided by Section 66.007, Parks and Wildlife Code.
- (d) The Parks and Wildlife Department shall enforce the rules adopted under this section.

Sec. 134.021. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual <u>aquaculture</u> [fish farm] projects.

Sec. 134.022. AQUACULTURE FACILITY [FISH FARMS]

PROTECTED.

(a) A person, other than the owner or operator of an <u>aquaculture facility</u> [a fish farm] may not fish on <u>an aquaculture facility</u> [a fish farm] without the consent of the owner or operator.

(b) A person may not unlawfully, as defined by Section 31.03(b), Penal Code, acquire or otherwise exercise control over cultured species [fish] with intent to deprive the owner of the cultured species [fish].

Sec. 134.023. PENALTIES.

- (a) Except as provided by Subsection (b), (c), or (d) of this section, a person who violates any provision of this chapter or rule adopted under this chapter commits an offense that is a Class C misdemeanor.
- (b) A person who violates Section 134.019 or 134.020 of this code commits an offense that is a Class B misdemeanor.
- (c) A person who violates Section 134.022(b) of this code by taking cultured species [fish] of a value of \$200 or more but less than \$750 commits an offense that is a Class A misdemeanor.
- (d) A person who violates Section 134.022(b) of this code by taking <u>cultured</u> <u>species</u> [fish] of a value of \$750 or more commits an offense that is a felony of the third degree.

Sections 134.024 to 134.030 reserved for expansion.

SECTION 10. Section 134.018 and Subchapter C, Chapter 134, Agriculture Code, and Sections 1.206, and 12.009, and Chapter 51, Parks and Wildlife Code, are repealed.

SECTION 11. Section 12.009(c), Agriculture Code, is amended to read as follows:

(c) The department shall encourage the raising of cultured species [fish], the development of the aquaculture [fish-farming] industry, and the marketing of aquaculture [fish farm] products. In this subsection, "cultured species [fish]" and "aquaculture [fish farming]" have the meanings assigned by Section 134.001 of this code.

SECTION 12. This Act takes effect September 1, 1991.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house is suspended, and this rule is hereby suspended.

The amendment was read.

Senator Brooks moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 977 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chair; Sims, Truan, Carriker, Lucio.

SENATE RULE 7.23(b) SUSPENDED

On motion of Senator Zaffirini and by unanimous consent, Senate Rule 7.23(b) was suspended as it relates to the House amendment to S.B. 355.

SENATE BILL 355 WITH HOUSE AMENDMENT

Senator Zaffirini called S.B. 355 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Cook

Amend S.B. 355, on page 1, line 14, by deleting the words "or processing" Delete all the underlined language beginning on line 15, page 1, after the word "capias" through line 24.

The amendment was read.

Senator Zaffirini moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 355 before appointment.

There were no motions offered

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair, Tejeda, Ellis, Whitmire, Green.

SENATE BILL 830 WITH HOUSE AMENDMENT

Senator Brooks called S.B. 830 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Jackson

Amend S.B. 830 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to hazardous waste reduction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. POLLUTION PREVENTION

- Sec. 361.431. DEFINITIONS. In this subchapter:

 (1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 1901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(A)(2).
 - (2) "Board" means the Texas Air Control Board.
- (3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

"Generator" and "generator of hazardous waste" have the

meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a

month; or

(B) more than one kilogram of acute hazardous waste

in a month.

(9) "Media" and "medium" mean air, water, and land into which

waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal

Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

POLICY AND GOALS FOR SOURCE REDUCTION AND Sec. 361.432 WASTE MINIMIZATION. (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management

and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Sec. 361.433. AGENCY PLANS. (a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.432, the board by rule shall, to the maximum extent that is technologically and economically feasible, develop plans to reduce the release of pollutants or contaminants into the air.

(b) Consistent with state and federal regulations, to achieve the policies stated Section 361.432, to the maximum extent that is technologically and economically feasible, the commission shall:

(1) develop plans to reduce the release of pollutants or contaminants

into water; and

(2) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state and the amount of pollutants and

contaminants, using source reduction and waste minimization.

(c) In order to effectively use resources and avoid duplication of effort, the commission and board by joint rule shall develop a common list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Sec. 361.434. APPLICATION. (a) Except as provided by Subsection (b), this

subchapter applies to the following persons:

(1) all large-quantity generators of hazardous waste;

(2) all generators other than large-quantity generators and

conditionally exempt small-quantity generators; and
(3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.433(c).

(b) The commission and the board through joint rulemaking shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission and board, and until that date this subchapter applies only to those persons designated by rule of the commission or board.

(c) This subchapter does not apply to activities regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Sec. 361.435. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS. (a) Persons identified under Section 361.434(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

(1) an initial survey that identifies:

(A) for each facility of persons identified under Section

361.434(a)(1), activities that generate hazardous waste; and

(B) for each facility of persons identified under Section 361.434(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.433(c);

(2) based on the initial survey, a prioritized list of economically and

technologically feasible source reduction and waste minimization projects;

(3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(4) an estimate of the type and amount of reduction anticipated: (5) a schedule for the implementation of each source reduction and waste minimization project;

(6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(9) an executive summary of the plan; and

reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.

(b) The source reduction and waste minimization plan may include:

(1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(4) a description of projects that have reduced the generation of

hazardous waste or the release of pollutants or contaminants; and

(5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified source reduction and waste minimization plans, as appropriate, and reports for persons identified under Section 361.434(a)(2).

(d) The commission and the board shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.

(e) The commission and board shall enter into memoranda of understanding as necessary to ensure that a person may meet both agencies' requirements in a

single plan.

Sec. 361.436. SOURCE REDUCTION AND WASTE MINIMIZATION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission and the board an annual report and a current executive summary according to any schedule developed under Section 361.434.

(b) The annual report shall comply with rules adopted by the commission and the board through joint rulemaking. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the

facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for each facility of persons identified under Section 361.434(a)(1), the amount of hazardous waste generated and, for each facility of persons identified under Section 361.434(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.433(c) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by agreement of the commission and the board; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the

achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization

activities.

Sec. 361.437. ADMINISTRATIVE COMPLETENESS. (a) The commission or the board may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.434, 361.435, or 361.436, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.434 and 361.435 or failure to submit a source reduction and waste minimization annual report in accordance with Section

361.436 is a violation of this chapter.

Sec. 361.438. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission or board personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive

summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission or board that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission or board shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or board or an employee of the commission or board does

not affect its status as a trade secret.

(e) Information classified by the commission or board as confidential under this section is not a public record for purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be used in a public hearing or disclosed to a person outside the commission or board unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Sec. 361,439. SOURCE REDUCTION AND WASTE MINIMIZATION
ASSISTANCE (a) The office of pollution prevention established under Section

ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and

procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization

technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry

in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and

waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and

businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and

applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and

support, waste exchange programs.

(b) The commission, the department, and the board shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission and the board shall develop incentives to promote the

implementation of source reduction and waste minimization, including:

(1) board and commission recommendations to the governor for

awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by joint rules of the commission and the board for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility;

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization

project, considering only the directly-affected parts of the permit.

(d) The commission and the board shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Sec. 361.440. REPORT TO LEGISLATURE. Notwithstanding any other reporting requirement, the commission and the board shall jointly prepare a biennial report to the presiding officers of the legislature and the governor concerning the implementation of this subchapter. The report must include:

(1) the status of the technical assistance program;

- (2) a description of progress toward reducing the volume of hazardous waste generated and the amount of pollutants and contaminants in the state;
- (3) an analysis of and recommendations for changes to source reduction and waste minimization programs, including consideration of additional enforcement provisions; and
- (4) an identification of any other needed pollution prevention activities.
- SECTION 2. Section 361.021, Health and Safety Code, is amended by adding Subsection (f) to read as follows:
- (f) The council shall consult with and advise the pollution prevention council on all matters relating to pollution prevention.
- SECTION 3. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0211 to read as follows:
- Sec. 361.0211. POLLUTION PREVENTION COUNCIL. (a) The commission, the department, the Texas Air Control Board, and the Railroad Commission of Texas shall each designate an individual to coordinate source reduction and waste minimization efforts and programs in the appointing agency and represent the agency on the pollution prevention council. The individual designated shall report to that individual's executive director or assistant or deputy director.
- (b) The pollution prevention council shall coordinate the activities of its represented agencies that concern source reduction and waste minimization to ensure the consistency of and to avoid duplication or conflict in programs.
- SECTION 4. Section 361.0215(b), Health and Safety Code, is amended to read as follows:
- (b) The committee shall advise the commission, pollution prevention council, and interagency coordination council on:
- (1) matters the council is required to consider under Section 361.021(d);
- (2) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;
- (3) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;
- (4) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and
- (5) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).
- SECTION 5. Section 361.0216, Health and Safety Code, is amended to read as follows:
- Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission [WASTE MINIMIZATION AND REDUCTION GROUP. The

commission shall establish a waste minimization and reduction group to assist in developing waste minimization and reduction programs and to provide incentives for the use of the programs so as to make the programs economically and technologically feasible].

SECTION 6. Subchapter D, Chapter 91, Natural Resources Code, is

amended by adding Section 91.110 to read as follows:

Sec. 91.110. OIL AND GAS WASTE REDUCTION AND MINIMIZATION. To encourage the reduction and minimization of oil and gas waste, the commission shall implement a program to:

(1) provide operators with training and technical assistance on oil and

gas waste reduction and minimization;

(2) assist operators in developing oil and gas waste reduction and minimization plans; and

(3) by rule establish incentives for oil and gas waste reduction and

minimization

SECTION 7. Not later than January 1, 1992, the Texas Water Commission and the Texas Air Control Board by joint rule shall adopt requirements for source reduction and waste minimization plans required by Section 361.435, Health and Safety Code, as added by this Act, and shall adopt the schedules under Section 361.434(b), Health and Safety Code, as added by this Act.

SECTION 8. Rules adopted by the Texas Water Commission and the Texas Air Control Board shall provide that the initial source reduction and waste minimization annual report required to be submitted by an identified class of persons under Section 361.436, Health and Safety Code, as added by this Act, shall be submitted not later than a date certain, which may not be earlier than 18 months from the date a schedule is adopted under Section 361.434(b), Health and Safety Code, as added by this Act, that identifies the class of persons as subject to the requirements of Subchapter N, Chapter 361, Health and Safety Code, as added by this Act.

SECTION 9. If either S.B. 35 or H.B. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and becomes law, the duties, powers, and responsibilities conferred by this Act on the Texas Water Commission or the Texas Air Control Board are transferred to the Texas Department of Natural Resources.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Brooks moved to concur in the House amendment to S.B. 830.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1459 WITH HOUSE AMENDMENT

Senator Montford called S.B. 1459 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Robnett

Amend S.B. 1459 as follows:

(1) On page 6, between lines 20 and 21, insert a new section, appropriately numbered, to read as follows:

SECTION _____. Subchapter E, Chapter 843, Government Code, is amended by adding Section 843.404 to read as follows:

Sec. 843.404. REESTABLISHMENT OF CERTAIN SERVICE. (a) The governing body of a participating subdivision by order may authorize an eligible person who has withdrawn contributions from the retirement system to reestablish the credit for service performed for the subdivision that was canceled at the time of withdrawal by depositing with the retirement system in a lump sum the amount withdrawn from the system that represents credit for service performed for the subdivision, including interest withdrawn, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(b) A person eligible to reestablish credit under this section is one who:

(1) established credited service in the retirement system;

(2) became a candidate for a state or federal office other than the office held at the time of becoming a candidate; and

(3) was determined to have vacated the person's office as a result of the decision in Clements v. Fashing, 102 S.Ct. 2836, 457 U.S. 957 (1982).

(c) Credit reestablished under this section is not subject to cancellation because of a previous termination of membership or because of absence from service.

(2) On page 28, after line 25, insert the following sections, appropriately numbered:

SECTION _____ Section 845.306(a), Government Code, is amended to read as follows:

- (a) The retirement system shall deposit in a member's individual account in the employees saving fund:
- (1) the amount of contributions to the retirement system deducted from the member's compensation;
- (2) interest allowed on money in the account in accordance with this subtitle;
- (3) an amount deposited by a member in accordance with Section 845.405 to establish credited service during a time of war;
- (4) the portion of a deposit required by Section 843.003 or 843.404 to reinstate credited service previously terminated that represents the amount withdrawn;
- (5) the amount deposited in accordance with Section 843.301(b) or 843.402(b) to establish credit for prior or current service for a person who became a member in accordance with Subchapter C of Chapter 842;
- (6) the amount deposited by a member in accordance with Section 843.601(e) to establish current service credit for military service;
- (7) the amount deposited by a member in accordance with Section 843.501 to establish credit for legislative service; and
- (8) the amount deposited by a person to become a member in accordance with Section 842.103.

SECTION _____ Section 845.307(a), Government Code, is amended to read as follows:

- (a) The retirement system shall deposit in the account of a participating subdivision in the subdivision accumulation fund:
- (1) all benefit contributions made by the subdivision to the system pursuant to Section 845.404(a)(2);
 - (2) interest allowed on money in the fund as provided by this subtitle;
- (3) amounts deposited by the subdivision in accordance with Section 845.405 to establish credited service during a time of war;
- (4) the withdrawal charge for reinstatement of credited service as provided by Section 843.003 or 843.404;

- (5) the amount of matching contributions made by a subdivision in accordance with Section 843.301(c) or 843.402(c) to establish credit for prior or current service for a person who became a member in accordance with Subchapter C of Chapter 842;
- (6) the amount of matching contributions made by a subdivision in accordance with Section 843.601(f) to establish current service credit for military service;
- (7) the amount of matching contributions made by a subdivision in accordance with Section 843.501 to establish credit for legislative service; and (8) the amount deposited by a subdivision for a person to become a

member in accordance with Section 842.103.

(3) Renumber sections of the bill accordingly.

The amendment was read.

Senator Montford moved to concur in the House amendment to S.B. 1459.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 134 WITH HOUSE AMENDMENTS

Senator Tejeda called S.B. 134 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Danburg

Amend S.B. 134 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the observance of certain state holidays.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Article 4591, Revised Statutes, is amended to read as follows: Art. 4591. ENUMERATION. The first day of January, the 19th day of January, the third Monday in January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the 19th day of June, the fourth day of July, the 27th day of August, the first Monday in September, [the second Monday in October, the 11th day of November, the fourth Thursday in November, and the 25th day of December, of each year, and every day on which an election is held throughout the state, are declared legal holidays, on which all the public offices of the state may be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The nineteenth day of January shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes. The third Monday in January is designated "Martin Luther King, Jr., Day" in observance of the birthday of Dr. Martin Luther King, Jr., and shall be observed in this state in the same manner as all other major national holidays. The 19th day of June is designated "Emancipation Day in Texas" in honor of the emancipation of the slaves in Texas on June 19, 1865.

SECTION 2. Article 4591.4, Revised Statutes, is repealed.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment - Saunders

Amend C.S.S.B. 134 as follows:

(1) After Section 1 of the bill, insert the following:

SECTION 2. Title 72, Revised Statutes, is amended by adding Article 4591.6 to read as follows:

Art. 4591.6. COLUMBUS DAY. The second Monday of October of each year is designated as Columbus Day in honor of Christopher Columbus. This day shall be regularly observed by appropriate ceremonies throughout the state. Public offices of the state shall remain open on Columbus Day, and state employees may not take the day off with pay in lieu of a legal holiday.

(2) Renumber Sections 2 and 3 of the bill appropriately.

The amendments were read.

Senator Tejeda moved to concur in the House amendments to S.B. 134.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 323 ADOPTED

Senator Green called from the President's table the Conference Committee Report on S.B. 323. (The Conference Committee Report having been filed with the Senate and read on Friday, May 24, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 64 ADOPTED

Senator Green called from the President's table the Conference Committee Report on S.B. 64. (The Conference Committee Report having been filed with the Senate and read on Friday, May 24, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2395 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on H.B. 2395. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 23, 1991.)

On motion of Senator Carriker, the Conference Committee Report was adopted by a viva voce vote.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Glasgow submitted the following report for the Committee on State Affairs:

C.S.H.B. 2898

SENATE BILL 380 WITH HOUSE AMENDMENT

Senator Carriker called S.B. 380 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Black

Amend S.B. 380 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and operation of the Commission on Jail Standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 511.003, Government Code, is amended to read as follows:

Sec. 511.003. APPLICATION OF SUNSET ACT. The Commission on Jail Standards is subject to [the Texas Sunset Act (]Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter [Act], the commission is abolished and this chapter expires September 1, 2003 [1991].

SECTION 2. Section 511.004, Government Code, is amended to read as

ollows:

Sec. 511.004. MEMBERSHIP; TERMS; VACANCIES. (a) The commission consists of nine members appointed by the governor with the advice and consent of the senate. One member must be a sheriff of a county with a population of more than 35,000 [200,000], one must be a sheriff of a county with a population of 35,000 [200,000] or less, one must be a county judge, one must be a county commissioner, one must be a practitioner of medicine licensed by the Texas State Board of Medical Examiners, and the other four [five] must be citizens of this state who do not hold another public office. At least one of the four citizen members must be from a county with a population of 35,000 or less.

(b) The sheriffs, [and] county judge, and county commissioner appointed to the commission shall perform the duties of a member in addition to their other duties.

- (c) Members serve for terms of six years with the terms of one-third of the members expiring on January 31 of each odd-numbered year.
- (d) If a sheriff, [or] county judge, or county commissioner member of the commission ceases to be sheriff, [or] county judge, or county commissioner, the person's position on the commission becomes vacant.

(e) A person appointed to fill a vacancy must have the same qualifications for appointment as the member who vacated the position.

(f) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

SECTION 3. Chapter 511, Government Code, is amended by adding Section 511,0041 to read as follows:

Sec. 511.0041. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 511.004;

(2) does not maintain during service on the commission the qualifications required by Section 511.004;

(3) violates a prohibition established by Section 511.0042;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that

it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of

the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

SECTION 4. Chapter 511, Government Code, is amended by adding Section 511.0042 to read as follows:

Sec. 511.0042. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of county corrections may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of county corrections may not be a commission member and may not be a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 5. Section 511.005, Government Code, is amended to read as follows:

Sec. 511.005. PRESIDING OFFICER; ASSISTANT PRESIDING OFFICER. (a) The governor shall designate one member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) The commission biennially shall elect [a presiding officer] from the membership [and] an assistant presiding officer. The [presiding officer and] assistant presiding officer serves in that capacity for a period of two years [serve two-year terms] expiring February 1 of each odd-numbered year.

SECTION 6. Section 511.006, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

SECTION 7. Chapter 511, Government Code, is amended by adding Section 511.0071 to read as follows:

Sec. 511.0071. COMPLAINTS AND ACCESS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the commission programs.

(c) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this chapter or of an entity the creation of which is authorized by this chapter;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this chapter or of an entity the creation of which

is authorized by this chapter; or

(3) in a bill for service provided by an individual or entity regulated under this chapter or by an entity the creation of which is authorized by this chapter.

(d) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve. The commission is not required to keep an information file about a complaint to the commission from or related to a prisoner of a county or municipal jail. The commission shall refer a complaint from or related to a prisoner to the appropriate local agency for investigation and resolution and may perform a special inspection of a facility named in the complaint to determine compliance with commission requirements.

(e) If a written complaint is filed with the commission that the commission has authority to resolve, the commission at least quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint

unless the notice would jeopardize an undercover investigation.

SECTION 8. Section 511.008, Government Code, is amended by adding

Subsections (d) through (j) to read as follows:

(d) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

(f) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(g) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees

must be based on the system established under this subsection.

- (h) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:
- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets

federal and state guidelines;

- (3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of significant underutilization.

(i) A policy statement prepared under Subsection (h) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(j) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (i). The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 9. Chapter 511, Government Code, is amended by adding Section

511.0091 to read as follows:

- Sec. 511.0091. FEES; INSPECTION ACCOUNT. (a) The commission shall set and collect reasonable fees to cover the cost of performing the following services for municipal jails operated for a municipality by a private vendor or for county jails, whether financed, purchased, designed, constructed, leased, operated, maintained, or managed for the county by a private vendor or provided entirely by the county:
- (1) review of and comment on construction documents for new facilities or expansion projects;

(2) performance of occupancy inspections; and

(3) performance of annual inspections.

(b) The commission may collect a fee under Subsection (a)(1) only for the review of and comment on construction documents for a jail for which the commission projects:

(1) a rated capacity of 100 or more prisoners; and

(2) an annual average jail population of prisoners sentenced by jurisdictions other than the courts of this state that is 30 percent or more of the total population of the jail.

(c) The commission may collect a fee under Subsection (a)(2) or (a)(3) only for the performance of an inspection of a jail that during the year in which the inspection is performed:

(1) has a rated capacity of 100 or more prisoners; and

(2) the commission projects as having an annual average jail population of prisoners sentenced by jurisdictions other than the courts of this state

that is 30 percent or more of the total population of the jail.

(d) The Commission on Jail Standards inspection account is established in the General Revenue Fund. The commission shall deposit all money collected under this section to the credit of the account. Money in the account may be used only by the commission for the purpose of reviewing and commenting on documents and performing inspections as described by Subsection (a).

SECTION 10. Section 511.015, Government Code, is amended to read as

follows:

Sec. 511.015. ANNUAL <u>REPORTS</u> [REPORT]. (a) Before February 1 of each year the commission shall submit to the governor and the presiding officer of each house of the legislature[, lieutenant governor, and speaker of the house of representatives] a report on its operations, its findings concerning county jails during the preceding year, and recommendations that it considers appropriate.

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the

time provided by the General Appropriations Act.

SECTION 11. (a) The governor shall appoint a county commissioner to fill the first vacancy in a position held by a public member on the Commission on Jail Standards occurring on or after the effective date of this Act to achieve the membership plan prescribed by Subsection (a), Section 511.004, Government Code, as amended by this Act. For the purposes of this section, the expiration of a member's term is considered to have created a vacancy.

(b) The changes in law made by this Act in the qualifications of persons appointed to the Commission on Jail Standards apply only to a member appointed on or after September 1, 1991.

(c) The first policy statement required to be filed under Subsection (i), Section 511.008, Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 12. This Act takes effect September 1, 1991.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Carriker moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 380 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Barrientos, Green, Dickson, Sims.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 591 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on H.B. 591. (The Conference Committee Report having been filed with the Senate and read on Friday, May 24, 1991.)

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber May 25, 1991

HONORABLE BOB BULLOCK PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

- S.B. 101, Relating to the re-creation and operation of the Old San Antonio Road Preservation Commission.
- S.B. 246, Relating to the additional charge for operating a motor vehicle with an expired registration.
- S.B. 284, Relating to the continuation and operation of the Texas Funeral Service Commission. (As amended)
- S.B. 359, Relating to the continuation and operation of the Board of Law Examiners and to the function of the board and the state supreme court concerning the licensing of attorneys. (As substituted)
- S.B. 377, Relating to abolishing the long-term care coordinating council for the elderly and transferring its powers to the Texas Department on Aging.
- S.B. 378, Relating to the continuation and operation of the Texas Cosmetology Commission; providing penalties. (As substituted and amended)
- S.B. 379, Relating to abolition of the Texas Health and Human Services Coordinating Council and the transfer of certain of the council's functions to the

governor's office, the Texas Department of Health, the Texas Department of Community Affairs, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, the Department of Information Resources, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Commerce, and the Texas Department of Human Services. (As substituted and amended)

- S.B. 383, Relating to consolidating the functions of the Commission on Fire Protection Personnel Standards and Education and the Fire Department Emergency Board, together with certain new powers and duties, into a newly created Texas Commission on Fire Protection; transferring certain duties related to fire protection, including oversight of the state fire marshal, from the State Board of Insurance to the Texas Commission on Fire Protection; providing penalties. (As substituted and amended)
- S.B. 428, Relating to the eligibility of professional athletes who are employed by a franchise of the National Football League, National Basketball Association, American League of Professional Baseball Clubs or the National League of Professional Baseball Clubs for the receipt of workers' compensation benefits. (As amended)
- S.B. 432, Relating to the continuation, composition, and functions of the Texas Real Estate Commission; providing workers' compensation coverage for certain real estate brokers and salesmen; providing penalties. (As substituted and amended)
- S.B. 545, Relating to the continuation and operation of the Texas Board of Professional Land Surveying; providing penalties. (As amended)
- S.B. 546, Relating to the abolition of the Texas Housing Agency and the Texas Department of Community Affairs and to the transfer of their functions to, and the creation and functions of, the Texas Department of Housing and Community Affairs. (As substituted and amended)
 - S.B. 557, Relating to indemnification by the state in certain civil actions.
- S.B. 614, Relating to the expansion of the Communities in Schools program. (As amended)
- S.B. 691, Relating to insurance coverage required to be provided by motor carriers for employees so as to enable motor carriers to provide accidental disability, medical and death coverages as alternatives to workers compensation insurance. (As amended)
- S.B. 770, Relating to fees charged by a county clerk for certain actions involving mental health services or chemical dependency services. (As amended)
- S.B. 887, Relating to certain student rentals, fees, and other charges collected by public institutions of higher education. (As substituted and amended)
- S.B. 1436, Relating to conduct causing injury to a child, elderly individual, or invalid. (As substituted)
 - H.C.R. 250, Honoring Lowry M. Carpenter on the occasion of his retirement.

Respectfully submitted,

BETTY MURRAY, Chief Clerk House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 640 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on H.B. 640. (The Conference Committee Report having been filed with the Senate and read on Friday, May 24, 1991.)

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 749 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 749 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 749 by adding, in SECTION 25 of the substitute, in Subdivision (1), Subsection (a), Article 6674v-6, Revised Statutes, between "system" and the semicolon, insert the following: "and the feasibility of effectively integrating the toll road or turnpike into the highway system embodied in the transportation plan of any municipality with a population of over 100,000, according to the most recent federal census, and within whose municipal limits or within whose extraterritorial jurisdiction such proposed toll road or turnpike is to be located"

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

The bill as amended was finally passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 277 WITH HOUSE AMENDMENT

Senator Johnson called S.B. 277 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Goodman

Amend S.B. 277 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to notices required to be given to certain owners of real property.

BĒ IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Subchapter A, Chapter 54, Local Government Code, is amended by adding Section 54.005 to read as follows:

Sec. 54.005. NOTICES TO CERTAIN PROPERTY OWNERS. (a) A governmental entity that is required by statute, rule, regulation, or ordinance to send a notice to an owner of real property for the purpose of enforcing a municipal ordinance may include the following statement in the notice: "According to the real property records of ________ County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not." The notice must be delivered in person or by certified mail, return receipt requested.

(b) If a governmental entity sends a notice to the owner of the property to which the notice relates, as shown on or after the 10th day before the date notice is sent by the real property records of the county in which the property is located, and the record owner no longer owns the property, the record owner shall execute an

affidavit provided with the notice by the governmental entity stating:

(1) that the record owner no longer owns the property; and

(2) the name and last known address of the person who acquired the property from the record owner.

(c) The record owner shall deliver the affidavit in person or by certified mail, return receipt requested, to the governmental entity not later than the 20th day after the date the record owner receives the notice.

(d) If the governmental entity receives an affidavit under Subsection (c), the governmental entity shall send the appropriate notice to the person named in the affidavit as having acquired the property. A notice sent under this subsection must include the statement authorized by Subsection (a).

(e) A governmental entity that receives an affidavit under Subsection (c) shall:

(1) maintain the affidavit on file for at least two years after the date

the entity receives the affidavit; and

(2) deliver a copy of the affidavit to the chief appraiser of the appraisal district in which the property is located.

(f) A governmental entity is considered to have provided notice to a property owner if the entity complies with the statute, rule, regulation, or ordinance under which the notice is sent and if it:

(1) complies with Subsection (a) and does not receive an affidavit from the record owner; or

(2) complies with Subsection (d) and does not receive an affidavit from the person to whom the notice was sent under Subsection (d).

(g) If a governmental entity complies with this section and does not receive an affidavit under Subsection (c), the record owner is presumed to be the owner of the property for all purposes to which the notice relates.

(h) For purposes of this section, "real property" does not include a mineral

interest or royalty interest.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Johnson moved to concur in the House amendment to S.B. 277.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 865 WITH HOUSE AMENDMENTS

Senator Johnson called S.B. 865 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Barton

Amend S.B. 865 as follows:

(1) On page 6, line 17, strike "or the authority" and substitute ", the authority, or the Texas Department of Health".

(2) On page 21, line 8, strike "or the authority" and substitute ", the authority, or the Texas Department of Health".

Committee Amendment - Barton

Amend S.B. 865 as follows:

(1) On page 2, between lines 24 and 25, insert a new SECTION 5 to read as follows:

SECTION 5. Section 7(b), Personal Care Facility Licensing Act (Article 4442c-4, Revised Statutes), is amended to read as follows:

- (b) All fees collected under this article shall be deposited in the state treasury to the credit of the personal care facility licensing fund and shall [may] be appropriated to the department only to administer and enforce this article.
 - (2) Renumber subsequent sections in Article 1 accordingly.(3) On page 13, line 21, strike "may" and substitute "shall".

Amendment - Barton

Amend S.B. 865 as follows:

On page 25, line 3, strike "shall" and substitute "may".

Amendment on Third Reading - Repp

Amend S.B. 865 on third reading as follows:

- (1) On page 4, strike lines 8-10 and substitute the following:
- (a) The department shall conduct a preliminary investigation of each allegation of abuse, exploitation, or neglect of a resident of a personal care facility to determine if there is evidence to corroborate the allegation. If the department determines that there is evidence to corroborate the allegation, the department shall conduct a thorough investigation of the allegation.
 - (b) If the thorough investigation reveals that abuse, exploitation,
- (2) On page 16, strike lines 7-10 and substitute the following:

 NEGLECT. (a) The department shall conduct a preliminary investigation of each allegation of abuse, exploitation, or neglect of a resident of a personal care facility to determine if there is evidence to corroborate the allegation. If the department determines that there is evidence to corroborate the allegation, the department shall conduct a thorough investigation of the allegation.
 - (b) If the thorough investigation reveals that abuse, exploitation,

Amendment on Third Reading - Uher

Amend S.B. 865 on third reading by striking Section 247.024(a) and substituting the following:

(a) The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed:

- (1) \$300 for a personal care facility that has not more than 10 beds;
- (2) \$350 for a personal care facility that has not less than 11 or more than 20 beds; and
 - (3) \$400 for a personal care facility that has 21 or more beds.

The amendments were read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendments to S.B. 865 by a viva voce vote.

SENATE BILL 661 WITH HOUSE AMENDMENT

Senator Turner called S.B. 661 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Rudd

Amend S.B. 661 as follows:

(1) On page 1, between lines 4 and 5, insert the following:

SECTION 1. Article 3.51-6, Insurance Code, is amended by adding Section 3E to read as follows:

- Sec. 3E. COVERAGE FOR CERTAIN GRANDCHILDREN. (a) In this section, "health insurance policy" means a group policy or contract, including a group contract issued by a company subject to Chapter 20, Insurance Code, that provides coverage for hospital, surgical, or medical expenses incurred as a result of accident or sickness.
- (b) A health insurance policy that provides coverage for a child of the policyholder must upon payment of a premium provide coverage for any children of the policyholder's child if those children are dependents of the policyholder for

federal income tax purposes.

SECTION 2. Section 2, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas Insurance Code), is amended by adding Subsection (L) to read as follows:

- (L) An individual or group policy of accident and sickness insurance that is delivered, issued for delivery, or renewed in this state, including a policy issued by a company subject to Chapter 20, Insurance Code, and evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), that provides coverage for a child of the policyholder, must provide coverage upon payment of a premium for any children of the policyholder's child if those children are dependents of the policyholder for federal income tax purposes
 - (2) On page 1, line 5, strike "SECTION 1." and substitute "SECTION 3.".
 - (3) On page 1, line 7, strike "Subsection (L)" and substitute "Subsection (M)".
- (4) On page 2, strike lines 9-14 and substitute the following: SECTION 4. This Act takes effect September 1, 1991, and applies only to a policy or evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 1992. A policy or evidence of coverage delivered, issued for delivery, or renewed before January 1, 1992, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Turner and by unanimous consent, the Senate concurred in the House amendment to S.B. 661 by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 549 ON SECOND READING

The Senate resumed consideration of C.S.H.B. 549 on second reading.

Question-Shall the bill be passed to third reading?

Senator Brown offered the following amendment to the bill:

- (1) Amend C.S.H.B. 549 by striking all below the enacting clause and substituting in lieu thereof the following:
- SECTION 1. TITLE 11, Chapter 71, Penal Code, is amended to read as follows:
- TITLE 11. ORGANIZED CRIME AND CRIMINAL GANG ACTIVITY Sec. 71.01. Definitions. In this chapter, (a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

- (2) membership in the combination may change from time to time; and
- (3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.
- (b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.
- (c) "Criminal Gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.
- (d) "Criminal Gang Activity" is conduct committed by a member of a criminal gang in furtherance of the purpose of the criminal gang and which otherwise constitutes an offense proscribed by the Penal Code.

(c)(e) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 of this code.

- Sec. 71.02. Engaging in Organized Criminal Activity Crime and Criminal Gang Activity. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:
- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, or forgery;

(2) any felony gambling offense;

- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
- (4) unlawful manufacture, transportation, repair or sale of firearms or prohibited weapons;
- (5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery fraud, misrepresentation, or deception;

- (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
- (7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance; or
 - (8) any felony offense under Chapter 32, Penal Code: ;
 - (9) any offense under Chapter 36, Penal Code; or
 - (10) any criminal mischief offense of Class A or higher.
- (11) any other offense committed in furtherance of the purpose of the criminal gang.
- (b) A person commits an offense under Section 71.01(d), if he knowingly engages in criminal gang activity.
- (b)(c) Except as provided in Subsection (c) (d) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (8) (11) of Subsection (a) or of the most serious offense under subsection (b) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.
- (c)(d) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (8) (11) of Subsection (a) of this section that the person conspired to commit.
- SECTION 2. Section 12, Article 42.12, Code of Criminal Procedure, is amended to read as follows:
- Sec. 12. DETENTION AS A CONDITION OF PROBATION. When a court having jurisdiction of a misdemeanor case grants probation to the defendant, the court may require as a condition of probation that the defendant submit to a period of detention in a county jail or community corrections facility to serve a term of imprisonment not to exceed 30 days and serve up to 100 hours of community service. In a felony case the court may require as a condition of probation that the defendant submit to a period of detention in a county jail to serve a term of imprisonment not to exceed 180 days. When probation is granted to a defendant convicted of a felony offense under Section 71.02, Penal Code the Court shall require as a condition of probation that the defendant submit to 180 days detention in the county jail or community corrections facility and serve up to 200 hours of public service in addition to any other penalty prescribed by law.
- SECTION 3. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.
- (b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.
 - SECTION 4. This Act takes effect September 1, 1991.
- SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

BROWN MONTFORD

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ellis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 549 ON THIRD READING

Senator Ellis moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 549 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE CONCURRENT RESOLUTION 159 ON SECOND READING

Senator Haley moved to suspend the regular order of business and Senate Rule 5.14 to take up for consideration at this time on its second reading:

S.C.R. 159, Adopting the official design of the reverse side of the Great Seal of Texas.

The motion prevailed by the following vote: Yeas 24, Nays 7.

Yeas: Armbrister, Bivins, Brooks, Brown, Carriker, Dickson, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Sibley, Sims, Turner, Whitmire.

Nays: Barrientos, Ellis, Johnson, Rosson, Tejeda, Truan, Zaffirini.

The resolution was read second time and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Ellis, Johnson, Rosson, Tejeda, Truan and Zaffirini asked to be recorded as voting "Nay" on the adoption of the resolution.

SENATE BILL 1267 WITH HOUSE AMENDMENTS

Senator Ratliff called S.B. 1267 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - R. Lewis

Amend S.B. 1267 as follows:

(1) On page 1, between lines 18 and 19, insert a new SECTION 3 to read as follows:

SECTION 3. Chapter 834, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372cc, Vernon's Texas Civil Statutes), is amended by adding Section 6 to read as follows:

Sec. 6. DEFENSE. It is a defense to prosecution for a violation under this Act that:

(1) the person charged with the violation is a candidate for an elective public office; and

(2) the sign was placed:

(A) by a person other than the person charged with the

violation;

(B) without the knowledge of the person charged; and (C) in connection with a campaign for an elective public

office by the person charged.

- (2) On page 3, between lines 8 and 9, insert the following:
- (i) It is a defense to prosecution for a violation under this article that:
- (1) the person charged with the violation is a candidate for an elective public office; and
 - (2) the sign was placed:

(A) by a person other than the person charged with the

violation;

(B) without the knowledge of the person charged; and (C) in connection with a campaign for an elective public

office by the person charged.

(3) Renumber the sections of the bill appropriately.

Committee Amendment - R. Lewis

Amend S.B. 1267 as follows:

(1) On page 3, between lines 8 and 9, insert a new SECTION 4 to read as follows:

SECTION 4. Chapter 255, Election Code, is amended by adding Section 255.007 to read as follows:

Sec. 255.007. NOTICE REQUIREMENT ON POLITICAL ADVERTISING SIGNS. (a) The following notice must be written on each political advertising sign:

"NOTICE: IT IS A VIOLATION OF STATE LAW (ARTICLE 2372cc, VERNON'S TEXAS CIVIL STATUTES, AND ARTICLE 6674v-7, REVISED STATUTES), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY."

- (b) A person commits an offense if the person:
- (1) knowingly enters into a contract to print or make a political advertising sign that does not contain the notice required by Subsection (a); or
- (2) instructs another person to place a political advertising sign that does not contain the notice required by Subsection (a).
 - (c) An offense under this section is a Class C misdemeanor.
- (d) In this section, "political advertising sign" means a written form of political advertising designed to be seen from a road, but does not include a bumper sticker.
 - (2) Renumber the sections of the bill appropriately.

The amendments were read.

On motion of Senator Ratliff and by unanimous consent, the Senate concurred in the House amendments to S.B. 1267 by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2110 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2110, Relating to emergency appropriations.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 2110 by adding a new SECTION 14 to read as follows and renumbering the remaining sections of the bill as needed:

SECTION 14. TEXAS STATE TECHNICAL INSTITUTE. (a) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$22,558 is appropriated, for the period ending August 31, 1991, from the General Revenue fund to the Texas State Technical Institute to pay for the repair of computer equipment on the Institute's Amarillo campus that was damaged by lightning on August 17, 1990.

(b) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$14,250 is appropriated, for the period ending August 31, 1991, from the General Revenue fund to the Texas State Technical Institute to pay for the repair of telecommunication appliances on the Institute's Waco campus that was damaged by lightning on May 14, 1991.

(c) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$7,142 is appropriated, for the period ending August 31, 1991, from the General Revenue fund to the Texas State Technical Institute to pay for the repair of roofs, ceilings, and walls of buildings on the Institute's Harlingen campus that were damaged by rain on April 5, 1991.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 2110 by adding the following language to Section 3:

Of appropriations made in S.B. 222, Acts of the 71st Legislature, Regular Session, 1989, for a 550-bed psychiatric facility (Northern Region Psychiatric Facility), \$34.8 million may be expended only for construction of the facility in Jefferson County in lieu of Fort Bend County.

PARKER ARMBRISTER

The amendment was read and was adopted by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Ellis, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Leedom, Lucio, Lyon, Parker, Rosson, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Bivins, Krier, Moncrief, Montford, Ratliff, Sibley, Turner.

Absent: Glasgow.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 2110 by adding a new SECTION 24 to read as follows, and renumbering the remaining sections.

SECTION 24. ALLOCATION OF PRODUCTIVITY BONUS ACCOUNT FUNDS. Savings realized from productivity plans implemented by a state agency or division under the provisions of Section 3, Article 6252-29(a), Vernon's Texas Civil Statutes, and rules promulgated by the Texas Incentive and Productivity

Commission shall be transferred by the agency to the Productivity Bonus Fund, No. 578, for credit to a productivity bonus account. From the amounts in a productivity bonus account, for the fiscal year ending August 31, 1991, an amount not to exceed 25 percent is appropriated to the Texas Incentive and Productivity Commission for the purpose of paying warrants to the employees based on information provided by the agency concerning names of employees and amounts, full or pro-rata shares, subject to the provisions regarding maximum amount per employee, due the employees.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Ratliff asked to be recorded as voting "Present-not voting" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2110 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 2110 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Ratliff.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

(Senator Armbrister in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 907 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 907, Relating to the administration of, benefits payable by, and credit established in the Teacher Retirement System of Texas.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 907 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 907 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 1657 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1657, Relating to assaults involving certain offensive physical contact; providing a penalty.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 1657 as follows:

Delete Section 1 of the bill and renumber remaining sections accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 1657 by adding the following sections and renumbering accordingly:

SECTION _____. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.051 to read as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED. (a) A peace officer or attorney representing the state may not require a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.11, 22.011, 22.021, or 25.02, Penal Code.

(b) If a peace officer or attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a) of this article, the peace officer or attorney must inform the complainant that the examination is not required and that a complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or (2) on the basis of the results of a polygraph examination taken by the

complainant.

(c) A peace officer or attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) of this article unless the officer or attorney provides the information in Subsection (b) of this article to the person and the person signs a statement indicating the person understands the information.

(d) A complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or (2) on the basis of the results of a polygraph examination taken by the

complainant.

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.25 to read as follows:

Art. 2.25. POLYGRAPH EXAMINATION OF PEACE OFFICER. (a) In this article, "peace officer" means a person elected, appointed, or employed by a governmental entity as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(b) A peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination because the peace officer refuses to take a polygraph examination.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Tejeda and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1657 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 1657 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2235 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2235, Relating to criminal and civil enforcement of certain environmental laws.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Amend H.B. 2235 as follows:

On page 10, strike lines 51 through 60; replace with the following:

- (c)(1) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the [commission or the Railroad Commission of Texas.] appropriate regulatory agency.
- (2) No person to whom the [commission] appropriate regulatory agency has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge or cause or permit the discharge of the waste in violation of the requirements of the permit or order.

The amendment was read and was adopted by the following vote: Yeas 14, Nays 13, Present-not voting 1.

Yeas: Barrientos, Brooks, Carriker, Dickson, Ellis, Green, Johnson, Lyon, Parker, Rosson, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Moncrief, Montford, Ratliff, Sibley, Sims.

Present-not voting: Glasgow.

Absent: Bivins, Haley, Turner.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

(Senator Lyon in Chair)

The bill as amended was passed to third reading by the following vote: Yeas 15, Nays 12, Present-not voting 1.

Yeas: Barrientos, Brooks, Dickson, Ellis, Green, Haley, Johnson, Lyon, Parker, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Harris of Tarrant, Henderson, Krier, Leedom, Lucio, Moncrief, Montford, Ratliff, Sibley, Sims.

Present-not voting: Glasgow.

Absent: Bivins, Carriker, Harris of Dallas.

MESSAGE FROM THE HOUSE

House Chamber May 25, 1991

HONORABLE BOB BULLOCK PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

- S.B. 259, Relating to the establishment of a sexual offender registration program; providing a penalty. (As amended)
- S.B. 337, Relating to the availability of bail for a person awaiting extradition after the service of the governor's warrant of arrest.
- S.B. 381, Relating to the abolition of the Council on Disabilities and to the transfer of its functions to and the operation of the Governor's Committee on People with Disabilities.
- S.B. 659, Relating to authorizing an increase in the student recreational sports fee at institutions within The Texas A&M University System.
- S.B. 772, Relating to the appraisal and assessment of property for property taxes and to property that is omitted from a property tax appraisal roll, valuation notification, appraisal district and appraisal review board hearings; and regarding tax appeal attorney's fees. (As amended)
- S.B. 884, Relating to the creation, powers, and duties of the State Office of Administrative Hearings, and to the requirements for certain administrative hearings. (As amended)
- S.B. 928, Relating to peace officers commissioned by the Comptroller of Public Accounts.
- S.B. 981, Relating to mitigation of adverse environmental impacts from the construction or maintenance of state highways. (As amended)
- S.B. 1032, Relating to the jurisdiction of a district court in a suit regarding a permit for a sexually oriented business.
 - S.B. 1204, Relating to certain agencies subject to the Texas Sunset Act.
- S.B. 1273, Relating to funding for regional vocational education planning committees. (As substituted)
- S.B. 1468, Relating to establishing the Texas Institute for Applied Environmental Research at Tarleton State University.
 - S.B. 1570, Relating to the child support service fee in Nueces County.

- S.B. 1605, Relating to the definition of a division order.
- H.C.R. 33, Encouraging school districts to include CPR training in the curriculum for the 9th and 12th grades.
- H.C.R. 35, Encouraging the foreign language educators of this state to make use of print resources in their daily instruction of foreign language and culture.
- H.C.R. 69, Requesting the Congress of the United States to endorse the concept of international youth connections.
- H.C.R. 190, Memorializing the Congress of the United States to honor its commitment to restore previously deferred federal funding for the State Legalization Assistance Grant.
- H.C.R. 156, Supporting the 3rd Silver-Haired Legislature's recommendation that prevention of crimes against elderly persons be a priority issue.
- H.C.R. 112, Affirming continued support for and commitment to a dual banking system.
- H.C.R. 80, Urging the Texas delegation in the United States Congress to pursue adoption of legislation giving the states authority to require collection of their sales and use taxes by out-of-state mail-order companies.
- S.C.R. 85, Encouraging all medical and dental schools operating in the State of Texas to reevaluate their curricula in terms of the current epidemic of substance abuse.
 - S.C.R. 46, Creating a Red River Boundary Commission.
- S.C.R. 68, Requesting all public institutions of higher education in Texas to examine the recommendations of the Study Committee on the Use of Part-Time Faculty.
- S.C.R. 31, Recommending that the State Highway and Public Transportation Commission incorporate the motto, "The Lone Star State," into its design of Texas' automobile license plate.

Respectfully submitted,

BETTY MURRAY, Chief Clerk House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 302 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 302, Relating to eliminating the promiscuity defense for a person who sexually assaults a child.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 302 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 302 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2782 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2782, Relating to the creation and administration of the Colorado-Fayette Hospital District.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2782 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2782 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

HOUSE BILL 2862 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2862, Relating to the authority of The Woodlands Metro Center Municipal Utility District, of Montgomery County, Texas, to exclude territory under certain circumstances.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2862 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2862 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1459 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1459, Relating to affirmative findings in a criminal case regarding the use or exhibition of a deadly weapon during the commission of a felony.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1459 ON THIRD READING

Senator Ellis moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1459 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Glasgow.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

SENATE RULE 5.14 SUSPENDED

On motion of Senator Armbrister and by unanimous consent, Senate Rule 5.14, as it relates to Notice of Intent, was suspended to allow for a 6:00 p.m. deadline for placing bills on the Intent Calendar.

HOUSE BILL 2265 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2265, Relating to a corporation's filing of articles of dissolution.

The bill was read second time.

Senator Carriker offered the following amendment to the bill:

Amend H.B. 2265 by adding new SECTIONS 4, 5, 6, and 7 as follows and renumbering existing SECTION 4 as SECTION 8:

SECTION 4. The Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes) is amended by amending Sections 17, 19, and 27 and by adding Section 27A to read as follows:

Sec. 17. QUORUM OF MEMBERS. Unless otherwise provided in the articles of incorporation, the presence of a majority of the members [present, in person or represented by proxy;] shall constitute a quorum for the transaction of business at a meeting of the members. If voting by proxy or[, but if voting] by mail is provided for in the by-laws, members so voting shall be counted as being [if] present in determining a quorum. The affirmative vote of a majority of the members present at a meeting at which a quorum is present shall constitute the act of the members, unless a larger number is required by law, the articles of incorporation, or the by-laws.

Sec. 19. ELECTION, QUALIFICATION, AND COMPENSATION OF DIRECTORS. The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the by-laws, by the members. The by-laws may provide for the election or nomination of directors by districts and for staggered terms. The directors shall be members of the corporation or, if permitted by the articles of incorporation or by-laws, directors may be representatives of members of the corporation that are not natural persons under conditions prescribed in the by-laws or articles of incorporation. The directors are [and shall be] entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as may be provided in the by-laws.

Sec. 27. <u>MERGER OR</u> CONSOLIDATION. (a) Any two or more corporations may <u>merge or consolidate as provided by this section.</u>

(b) Each merging corporation shall adopt a plan of merger that includes:

the name of each merging corporation;
 the name of the surviving corporation;

(3) the terms and conditions of the merger;

(4) the changes, if any, in the articles of incorporation of the surviving corporation to be effected by the merger; and

(5) any other provision relating to the merger considered necessary or

desirable.

(c) Each consolidating corporation shall adopt a plan of consolidation that includes:

the name of each consolidating corporation;

(2) the name of the new corporation;

(3) the terms and conditions of the consolidation;

(4) the proposed articles of incorporation for the new corporation that include each provision required by this Act to be included in articles of incorporation; and

(5) any other provision relating to the consolidation considered

necessary or desirable.

(d) The plan for a merger or consolidation shall be submitted for consideration at a regular or special meeting of the members of each merging or consolidating corporation called for that purpose. Each member shall be given a notice of the meeting that includes the proposed plan or a summary of the plan. The notice must be given within the time and in the manner prescribed by this Act for giving notice of a meeting of members. An affirmative vote of a majority of the members present at the meeting of each corporation at which a quorum is present is necessary to adopt the plan of merger or consolidation, unless a larger number is required by the articles of incorporation or the by-laws.

(e) The members entitled to vote at the meeting may vote in person or by either proxy or mail ballot. The by-laws may authorize voting by both proxy and mail ballot.

- (f) If the proposed merger or consolidation is approved, the articles of merger or consolidation shall be executed on behalf of each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers.
 - (g) The articles of merger or consolidation shall include:

(1) the merger or consolidation plan;

(2) for each corporation, the date on which the members of the corporation met and approved the plan; and

(3) for each corporation, the number of members entitled to vote and

the number who voted for the plan.

(h) The original and a copy of the articles of merger or consolidation shall be delivered to the secretary of state. If the secretary of state finds that the articles conform to law, the secretary of state, when all fees have been paid as provided by this Act, shall:

(1) file the original articles of merger or consolidation; (2) issue a certificate of merger or consolidation; and

(3) attach to the certificate of merger or consolidation the copy of the articles of merger or consolidation and deliver the certificate and an attached copy to the surviving or new corporation or its representative [enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than three (3), the time of the

annual meeting and election, and the name of at least three (3) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act:

[(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filling and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all of the

powers of a corporation as originally organized hereunder).

Sec. 27A. EFFECT OF MERGER OR CONSOLIDATION. (a) In a consolidation the existence of each corporation ceases and the articles of consolidation are considered to be the articles of incorporation of the new corporation. In a merger the separate existence of each merging corporation ceases and the articles of incorporation of the surviving corporation are considered to be amended to the extent, if any, that amendment is provided for in the articles of merger.

(b) All the rights, privileges, immunities, franchises, real and personal property, applications for membership, debts due on any account, and choses in action of each of the consolidating or merging corporations are transferred to and vested in

the new or surviving corporation.

(c) The new or surviving corporation is responsible and liable for all the liabilities and obligations of the consolidating or merging corporations, and any claim existing or action or proceeding pending by or against any of the consolidating or merging corporations may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving corporation may be substituted in its place. Neither the rights of creditors nor any liens on the property of any of the corporations are impaired by the consolidation or merger.

(d) This Act does not affect the duty of a corporation to comply with the applicable provisions of the Public Utility Regulatory Act (Article 1446c, Vernon's

Texas Civil Statutes).

SECTION 5. Subsection (a), Section 28, Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any corporation shall be dissolved upon an affirmative vote of at least fifty-one percent (51%) [may dissolve by majority vote] of all the members of the corporation. The vote must be taken at a meeting of the present in person or by proxy at any regular meeting, or at any special meeting, of its] members called for that purpose. Voting by proxy or mail ballot shall be permitted in a manner that can be confirmed by audit. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast [in person or by proxy] by at least fifty-one percent (51%) of all [a majority] of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

SECTION 6. The Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes) is amended by adding Sections 28A and 28B to read as follows:

Sec. 28A. MORTGAGE OF PROPERTY TO SECURE INDEBTEDNESS. The board of directors of a corporation may, without authorization by the members, mortgage, pledge, or otherwise encumber the property, assets, rights, privileges, licenses, franchises, permits, and revenues of the corporation, acquired or to be acquired, to secure any indebtedness of the corporation. The board of directors shall determine the terms and conditions of the encumbrance

Sec. 28B. PROCEDURE FOR DISPOSITION OF PROPERTY. (a) A corporation may not sell, mortgage, lease, or otherwise dispose of or encumber all or substantially all of its property for a purpose other than to secure indebtedness of the corporation unless the sale, mortgage, lease, or other disposition or encumbrance is authorized as provided by Subsections (b) through (d) of this

section.

(b) The board of directors shall adopt a resolution recommending the sale, mortgage, lease, or other disposition or encumbrance and directing the submission

of the matter to a vote at a regular or special meeting of the members.

(c) Each member entitled to vote at the meeting shall be given written notice of the meeting. The notice must state that the purpose or one of the purposes of the meeting is to consider the proposed sale, mortgage, lease, or other disposition or encumbrance of the property and must fairly summarize the material features of the proposed transaction. The notice must be given within the time and in the manner prescribed by this Act for giving notice of a meeting of members.

(d) The members may authorize the board of directors to make the sale, mortgage, lease, or other disposition or encumbrance and to fix the terms and conditions of the transaction and the consideration to be received by the corporation. An affirmative vote of at least fifty-one percent (51%) of all of the members of the corporation is required to give the board the authority described by this subsection. The vote must be taken at a regular or special meeting of the members called for that purpose. Voting by proxy or mail ballot shall be permitted in a manner that can be confirmed by audit.

(c) Notwithstanding the approval by the members, the board of directors may abandon the sale, mortgage, lease, or other disposition or encumbrance without the requirement of further action or approval by the members, subject to the rights of

third parties under a relevant contract.

SECTION 7. Section 29, Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. FEES. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Ten Dollars (\$10).

(2) Filing of articles of amendment and issuing a certificate of amendment, Two Dollars and Fifty Cents (\$2.50).

(3) Filing articles of consolidation or merger and issuing a certificate with respect thereto, Ten Dollars (\$10).

(4) Filing articles of dissolution, Two Dollars and Fifty Cents (\$2.50).

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2265 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2265 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Glasgow.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

HOUSE BILL 2478 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2478, Relating to the approval and certification of certain health organizations by the Texas State Board of Medical Examiners.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2478 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2478 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Glasgow.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 1704 ON THIRD READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 1704, Relating to the practice of psychology.

The bill was read third time.

Senator Brooks offered the following amendment to the bill:

Amend C.S.H.B. 1704 by striking everything below the enacting clause and substituting the following in lieu thereof:

SECTION 1. Section 9, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. RECEIPTS AND DISBURSEMENTS. The executive director of the Board shall receive and [the] account for all monies derived under this Act. The executive director shall pay these monies weekly to the State Treasurer who shall keep them in a separate fund to be known as the "Psychologists Licensing Fund." Monies may be paid out of this fund only by warrant drawn by the State

Comptroller upon the State Treasurer, upon itemized voucher, approved by the chairperson of the Board or the executive director of the Board. The financial transactions of the Psychologists Licensing Fund are subject to audit by the Auditor of the State of Texas in accordance with Chapter 321, Government Code. The executive director of the Board shall give a surety bond for the faithful performance of his duties to the governor in the sum of Ten Thousand Dollars (\$10,000.00) or an amount recommended by the State Auditor. The premium for this bond shall be paid out of the Psychologists Licensing Fund. The Board may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of this Act, including the advance payment of an amount not to exceed 80 percent of the travel expenses of a witness called by the Board to testify on the Board's behalf.

SECTION 2. Section 11(d), Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) In addition to the requirements of Subsection (b) or (c) of this section, the applicant must meet the following qualifications:

(1) the applicant has attained the age of majority:[;]
(2) the applicant is of good moral character;[;]

(3) in the judgment of the Board, the applicant is physically and mentally competent to render psychological services with reasonable skill and safety and is afflicted with no disease or condition, either mental or physical, which would impair competency to render psychological services;[;] and

(4) the applicant:

(A) has not been convicted of a felony or a crime

involving moral turpitude;

(B)[;] does not use drugs or intoxicating liquors to an extent that affects the applicant's professional competency;

(C)[-] has not been guilty of fraud or deceit in making

the application;

(D) [, or] except as provided by Section 15B of this Act, has not aided or abetted a person, not a licensed psychologist, in representing that person as a psychologist in this state;

(E) except as provided by Section 15B of this Act, has represented himself or herself to be a psychologist licensed in this state at a time he or she was not licensed to practice psychology in this state, or practiced psychology in this state;

SECTION 3. Section 15, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. CERTIFICATION. [(a)] A qualified applicant for certification who has successfully passed the examinations prescribed by the Board and has paid the certification fee shall be certified by the Board as a psychologist.

[(b) The Board may waive any licensure or certification requirement for an applicant with a valid license or certificate from another state having licensing or certification requirements substantially equivalent to those of this state. However, all applicants must take and pass the Board's jurisprudence examination before licensing or certification.]

SECTION 4. The Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes) is amended by adding Sections 15A and 15B

to read as follows:

Sec. 15.A. RECIPROCITY. (a) An applicant is entitled to certification or licensure on submission to the Board of an application in the form prescribed by the Board and payment of the required application fees if:

(1) the individual is licensed, certified, or registered as a psychologist by another state, the District of Columbia, or a commonwealth or territory of the United States and is in good standing with the regulatory agency of that jurisdiction;

- (2) the requirements for licensing, certification, or registration in the other jurisdiction are substantially equal to those prescribed by this Act;
- (3) the individual has engaged in the practice of psychology for not less than five years on the date of application for certification; and
 - (4) the individual has passed the Board's jurisprudence examination.
- (b) The Board may adopt rules for the certification or licensing of an individual who holds a valid license or the equivalent from another country.
- Sec. 15B. TEMPORARY PERMIT. (a) An applicant for certification or licensure by reciprocity under Section 15A of this Act may apply for a temporary permit to authorize the applicant to practice psychology in this state.
- (b) A person may apply for a temporary permit by completing an application and paying a temporary permit fee prescribed by the Board.
 - (c) The board shall adopt rules for the issuance of temporary permits.
- (d) A temporary permit issued under this section does not constitute a vested property right.
- SECTION 5. Section 17(b) and (h), Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), are amended to read as follows:
- (b) Certificates and licenses will be renewed no less than once every two years. Unless otherwise provided by board rule, certificates [Certificates] and licenses expire on December 31st in the appropriate year following their issuance or renewal and are invalid thereafter unless renewed. The Board by rule may adopt a system under which certificates or licenses expire on various dates during the year. For the year in which the expiration date is changed, certification or licensing fees shall be prorated so that each certificate or license holder must pay only that portion of the fee that is allocable to the number of months during which the certificate or license is valid. On renewal of the certificate or license on the new expiration date, the full certification or licensing fee is payable.
- (h) The renewal of certificates held by psychological associates as established by Section 19 of this Act is subject to the renewal procedures prescribed by this section except that the certificates expire May 31st in the appropriate year following their issuance or renewal, unless otherwise provided by board rule. The Board by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the expiration date is changed, certification fees shall be prorated so that each certificate holder must pay only that portion of the fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the full certification fee is payable.
- SECTION 6. Sections 23(a) and (e), Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), are amended to read as follows:
- (a) The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist or the certificate of any psychological associate or reprimand any psychologist upon proof that the psychologist:
- (1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; or
- (2) uses drugs or intoxicating liquors to an extent that affects his professional competency; or
- (3) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(4) except as provided by Section 15B of this Act, has aided or abetted a person, not a licensed psychologist, in representing that person [himself] as a psychologist within this state; or

(5) except as provided by Section 15B of this Act, has represented himself or herself to be a psychologist licensed in this state at a time he or she was not licensed to practice psychology in this state, or practiced psychology in this state without a license to practice psychology in this state; or

(6) [(5)] has been guilty of unprofessional conduct as defined by the

rules established by the Board; or

(7) [(6)] for any cause for which the Board shall be authorized to

take that action by another section of this Act.

(e) The Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologist's license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologist's license or certification, the said hearing to rescind the probation shall be called by the chairperson of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or the probationer's counsel at least ten (10) days prior to the time set for the hearing. Service of notice of a board action is effected by sending written notice by certified mail to the license holder's address of record. [When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply.] At said hearing the respondent shall have the right to appear either personally or by counsel or both, to produce witnesses or evidence in the behalf of the respondent, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

SECTION 7. Section 241.101, Health and Safety Code, is amended by

adding Subsection (e) to read as follows:

(e) A hospital licensed under this chapter may, on recommendation of the medical staff and approval by the governing body, grant to a psychologist licensed by the Texas State Board of Examiners of Psychologists a category of staff membership that it considers appropriate. A hospital may require coadmission with a physician or coleadership of a treatment team with a physician. A hospital may assign clinical privileges and grant order-writing privileges to a psychologist that are within the scope of the license issued to the psychologist by the board. An order-writing privilege granted by a hospital to a psychologist may not include the writing of an order for medication or any other function that is within the exclusive purview of a licensed physician.

SECTION 8. Section 95, Texas Mental Health Code (Article 5547-95, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as

follows:

(f) A facility licensed by the department may, on recommendation of the professional staff and approval by the governing body, grant to a psychologist licensed by the Texas State Board of Examiners of Psychologists a category of staff membership that it considers appropriate. A hospital may require coadmission with

a physician or coleadership of a treatment team with a physician. A hospital may assign clinical privileges and grant order-writing privileges to a psychologist that are within the scope of the license issued to the psychologist by the board. An order-writing privilege granted by a hospital to a psychologist may not include the writing of an order for medication or any other function that is within the exclusive purview of a licensed physician.

SECTION 9. This Act takes effect September 1, 1991.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

MOTION TO PLACE HOUSE BILL 1744 ON SECOND READING

Senator Truan moved to suspend the regular order of business to take up for consideration **H.B.** 1744 on its second reading and passage to third reading.

H.B. 1744, relating to the creation, administration, and operation of underground water conservation districts and the management of critical areas.

On motion of Senator Truan and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

HOUSE BILL 1747 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1747, Relating to the salaries of district and appellate judges.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1747 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1747 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Glasgow.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

HOUSE BILL 1801 ON SECOND READING

On motion of Senator Harris of Tarrant and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1801, Relating to a holder in due course of a negotiable instrument as an "owner" for the purposes of the Penal Code, to the offense of making a false statement to obtain property or credit from a financial institution, and to the presumption for theft by check.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1801 ON THIRD READING

Senator Harris of Tarrant moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1801** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Glasgow.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 2259 ON THIRD READING

Senator Barrientos moved that the regular order of business be suspended and that C.S.H.B. 2259 be placed on its third reading and final passage.

C.S.H.B. 2259, Relating to child care services for state employees.

The motion prevailed by the following vote: Yeas 23, Nays 5, Present-not voting 1.

Yeas: Armbrister, Barrientos, Brooks, Dickson, Ellis, Green, Haley, Henderson, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Harris of Dallas, Leedom, Sims.

Present-not voting: Glasgow.

Absent: Bivins, Carriker.

The bill was read third time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 2259 by adding a new Section _____ and renumbering subsequent sections, as follows:

Section _____. Notwithstanding the authority granted by this Act, no state general revenue may be appropriated for costs related to the implementation of this Act during the fiscal biennium beginning on September 1, 1991 unless expressly authorized by the general appropriations act.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Krier offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 2259 by adding the following appropriately numbered sections, and renumbering other sections accordingly.

SECTION _______ (a) The legislature recognizes that the demand for child care is increasing and that family homes are the primary child care choice for parents who are state employees. Family day homes are the most cost effective form of child care for these state employees and is especially critical in serving parents who have chronically ill or disabled children. To assure the availability of this most essential form of child care for parents who are state employees it is important to protect the existence of family day homes in residential settings.

(b) Family homes are required by law to operate in a residential setting and are compatible to other residential activities. Nevertheless, local deed restrictions and zoning ordinances often operate to prohibit family homes. As a result, some providers do not register with the Texas Department of Human Services, resulting in unregulated, potentially inappropriate, or even dangerous child care.

(c) It is the intent of the legislature that a coordinated, comprehensive system of child care services be made available to the parents of Texas; that family homes remain a viable choice for parents; that unregulated family homes become registered so that the quality of their services will be improved; and that the legal status of family homes in residential areas be clarified so that the availability of family home care will increase.

SECTION _____ Section 42.002(9), Human Resources Code, is amended to read as follows:

(9) "Family home" means a home that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including the caretaker's own, does not exceed 12 at any given time. "Family home" does not include a home that provides care exclusively for any number of children who are the children, grandchildren, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by a court decree.

SECTION _____. Sections 42.052(c) and (f), Human Resources Code, are amended to read as follows:

(c) A family home that provides care for three or fewer children, excluding the caretaker's own children, may register with the division. A family home that provides care for four or more children, excluding the caretaker's own children, or that receives, directly or indirectly, federal funds administered through the department for the purchase of child care services, must register with the division. A registration remains valid until revoked or surrendered. The operator of a registered home must display the registration in a prominent place at the home.

(f) A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered with the division under this chapter. Any public advertisement for a registered

family home which uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE TEXAS DEPARTMENT OF HUMAN SERVICES BUT IS NOT LICENSED [OR INSPECTED]."

SECTION _____ Section 42.075(a), Human Resources Code, is amended to

read as follows:

(a) A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; [or]

(3) places a public advertisement for an unlicensed facility; or

(4) operates a family home that is not registered with the division as required by Section 42.052(c).

SECTION _____. Section 42.076(c), Human Resources Code, is amended to read as follows:

(c) A person who operates a family home that is not registered with the division as required by Section 42.052(c) of this code or who places an advertisement for a registered family home in violation of Section 42.052(f) of this code commits a Class C misdemeanor.

SECTION _____ Subchapter B, Chapter 5, Property Code, is amended by

adding Section 5.027 to read as follows:

Sec. 5.027. FAMILY HOMES. (a) A dedicatory instrument or restrictive covenant may prohibit use of property as a family home only by a provision that expressly prohibits use of the property as a family home.

(b) A dedicatory instrument or restrictive covenant may not be construed to prohibit use of property as a family home on the basis of a general prohibition against a business or trade use of the property or a provision that limits the property to residential use only.

(c) This section does not preclude a restriction contained in a dedicatory instrument or restrictive covenant that is applicable to property used as a family home if the restriction:

(1) is equally applicable to other residences subject to the dedicatory

instrument or restrictive covenant; and
(2) does not have the effect of indirectly prohibiting the use of the

property as a family home.

(d) A local governing body responsible for enforcing a dedicatory instrument or restrictive covenant may:

(1) regulate the spacing or density of family homes within its jurisdiction;

(2) restrict the total number of children cared for in a family home so long as it allows a minimum of six children per family home and follows the guidelines established by the Texas Department of Human Services regarding the number of children cared for in a family home; and

(3) require notification before a provider offers family home care.

(e) In this section:

(1) "Dedicatory instrument" has the meaning assigned by Section 202.001.

(2) "Family home" means a residential home that meets the definition of and requirements applicable to a family home under Chapter 42, Human Resources Code.

(3) "Restrictive covenant" has the meaning assigned by Section 202.001.

SECTION Subchapter A, Chapter 211, Local Government Code, is amended by adding Section 211.0031 to read as follows:

Sec. 211.0031. ZONING OF FAMILY HOMES. (a) Use of property as a family home registered under Chapter 42, Human Resources Code, constitutes a residential use of the property for zoning purposes, and the governing body of a municipality shall consider that use as a permitted use in all zones in which residential uses are permitted, including zones for single family dwellings.

(b) This section does not prohibit a municipality from placing a restriction on

registered family homes under its zoning authority if the restriction:

(1) applies equally to other residences subject to the zoning authority;

and

(2) does not have the effect of totally prohibiting the operation of registered family homes in the regulated area.

(c) A municipality may use its zoning authority to:

(1) regulate the spacing or density of registered family homes within

a defined residential area;
(2) restrict the total number of children cared for in a registered family home so long as it allows a minimum of six children per family home and follows the guidelines established by the Texas Department of Human Services regarding the number of children cared for in a family home; and

(3) require notification before a registered provider offers family home

(d) In this section, "family home" means a residential home that meets the definition of and requirements applicable to a family home under Chapter 42, Human Resources Code.

The amendment was read.

POINT OF ORDER

Senator Henderson raised a Point of Order that the amendment was not germane to the bill.

The President ruled the Point of Order was well-taken and sustained.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 21, Nays 7, Present-not voting 1.

Yeas: Armbrister, Barrientos, Brooks, Dickson, Ellis, Green, Haley, Henderson, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Harris of Dallas, Leedom, Ratliff, Sibley, Sims.

Present-not voting: Glasgow.

Absent: Bivins, Carriker.

(Senator Ratliff in Chair)

HOUSE BILL 1744 ON SECOND READING

Senator Truan moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1744, Relating to the creation, administration, and operation of underground water conservation districts and the management of critical areas.

The motion prevailed by the following vote: Yeas 25, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Ellis, Haley, Harris of Tarrant, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Henderson.

Present-not voting: Glasgow.

Absent: Bivins, Brown, Green, Harris of Dallas.

The bill was read second time.

Senator Sims offered the following amendment to the bill:

Floor Amendment No. 1

Amend H.B. 1744, SECTION 5: delete subsection (b) of Sec. 52.168.

The amendment was read and was adopted by a viva voce vote.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 2

Amend H.B. 1744 as follows:

Add a new SECTION 9 and renumber the following sections:

SECTION 9. VALIDATION AND DEFINITION. In this Section "district" means the Uvalde County Underground Water Conservation District. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are validated in all respects. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are valid as though they originally had been legally authorized or accomplished.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Present-not voting" on the adoption of the amendment.

Senator Krier offered the following amendment to the bill:

Floor Amendment No. 3

Amend H.B. 1744 as follows:

- (1) Insert the following SECTION, appropriately numbered, to read as follows: SECTION 9. Sections 11.023(c) and (d), Water Code, are amended to read as follows:
- (c) State [Unappropriated storm] water [and floodwater] may be appropriated to recharge underground freshwater-bearing [freshwater bearing] sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties [if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never by appropriated, diverted, or used by a permittee for this recharge purpose.]
- (d) When it is put or allowed to sink into the ground, <u>state</u> water appropriated under Subsection (c) of this section loses its character and classification as <u>state</u> [storm] water [or floodwater] and is considered percolating ground water.

SECTION 10. Section 9 applies to an application for a permit to appropriate state water to recharge underground freshwater-bearing sands and aquifers located within Kinney, Uvalde, Medina, Bexar, Comal, or Hays County filed before, on, or after the effective date of this Act.

The amendment was read and was adopted by the following vote: Yeas 21, Nays 6, Present-not voting 2.

Yeas: Armbrister, Barrientos, Brown, Carriker, Dickson, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Moncrief, Ratliff, Sibley, Sims, Tejeda, Whitmire, Zaffirini.

Nays: Ellis, Lyon, Montford, Parker, Rosson, Truan.

Present-not voting: Brooks, Glasgow.

Absent: Bivins, Turner.

On motion of Senator Truan and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1744 ON THIRD READING

Senator Truan moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1744 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1, Present-not voting 1.

Yeas: Armbrister, Brooks, Carriker, Dickson, Ellis, Haley, Harris of Tarrant, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Barrientos.

Present-not voting: Glasgow.

Absent: Bivins, Brown, Green, Harris of Dallas.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos and Henderson asked to be recorded as voting "Nay" on the final passage of the bill.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Present-not voting" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber May 25, 1991

HONORABLE BOB BULLOCK PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 307, Relating to qualifications of the commissioner of health. (As amended)

- S.B. 409, Relating to further detention of certain persons.
- S.B. 411, Relating to the execution of arrest warrants; making certain technical corrections.
- S.B. 430, Relating to the continuation and operation of the State Board of Barber Examiners; providing penalties. (As substituted and amended)
- S.B. 637, Relating to foreign trade zones established by joint airport boards. (As substituted and amended)
- S.B. 818, Relating to water quality and the establishment of water quality standards and the assessment and management of water quality. (As amended)
- S.B. 828, Relating to the treatment of chemically dependent offenders in the criminal justice system. (As amended)
- S.B. 1000, Relating to student services fees at public institutions of higher education. (As substituted and amended)
 - S.B. 1070, Relating to the Texas Department of Commerce. (As amended)
- S.B. 1340, Relating to recycling programs and incentives; creating offenses and providing penalties. (As substituted and amended)
- S.B. 1566, Relating to purposes for which money in the Texas home port trust fund may be used. (As amended)

The House has adopted the Conference Committee Report on H.B. 640 by a record vote of 113 Ayes, 19 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on S.B. 64 by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on S.B. 764: Stiles, Chair; Park, Pierce, Brimer, D. Smith.

The House has refused to concur in Senate amendments to H.B. 263 and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Danburg, Chair; Russell, P. Gallego, Gibson, De La Garza.

The House has refused to concur in Senate amendments to H.B. 1126 and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: McCollough, Chair; Black, B. Turner, Blackwood, Crawford.

The House has refused to concur in Senate amendments to H.B. 2555 and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Willy, Chair; Uher, Hartnett, McCollough, Schechter.

The House has concurred in Senate amendments to H.B. 1204 by a non-record vote.

The House has concurred in Senate amendments to H.B. 769 by a non-record vote.

The House has concurred in Senate amendments to H.B. 278 by a non-record vote.

The House has concurred in Senate amendments to H.B. 142 by a non-record vote.

S.B. 1596, Relating to procedures to reduce the backlog of convicted felons confined in county jails awaiting transfer to the institutional division of the Texas Department of Criminal Justice, to a performance payment program to counties that successfully divert offenders from confinement in the institutional division, to the composition of the Criminal Justice Policy Council and the Criminal Justice Coordinating Council, to the composition of community justice councils, to the award of time for good conduct, and to the repeal of certain statutes related to criminal offenses. (As amended)

H.J.R. 113, Proposing a constitutional amendment authorizing the legislature to provide for the issuance of bonds and state financing of the purchase and development of lands formerly used by the federal government as military bases.

Respectfully submitted,

BETTY MURRAY, Chief Clerk House of Representatives

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Barrientos gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

Senator Haley announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 1:30 p.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider the following bill and resolution today:

H.C.R. 234 H.B. 1108

SENATE RULE 11.11 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might meet today to consider bills for the Local and Uncontested Bills Calendar.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Dickson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Economic Development might consider the following bills today:

H.B. 2061 H.B. 2850

SENATE RULE 11.11 SUSPENDED

On motion of Senator Green and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might consider the following bills today:

H.B. 2813 H.B. 2904

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider H.B. 2151 today.

HOUSE RESOLUTION ON FIRST READING

The following resolution received from the House was read the first time and referred to the Committee indicated:

H.J.R. 113, To Committee on State Affairs.

RECESS

On motion of Senator Brooks, the Senate at 5:01 p.m. took recess until 1:30 p.m. tomorrow.

SEVENTY-SIXTH DAY

(Continued) (Sunday, May 26, 1991)

AFTER RECESS

The Senate met at 1:30 p.m. and was called to order by Senator Haley.

MESSAGE FROM THE HOUSE

House Chamber May 26, 1991

HONORABLE BOB BULLOCK PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 1, Expressing support for border waste management program cooperation between the United States and Mexico.